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Garcia

CITY OF SCOTTSDALE  
ONE STOP SHOP RECORDS  
7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

917508

C.O.S. Contract No. 2022-175-COS  
(Optima McDowell Mountain Village)  
(Resolution No. 12631)

### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 21 day of November, 2022, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and McDowell Mountain Village Declarant LLC, a Delaware limited liability company, and its successors and assigns (collectively "Developer").

### RECITALS

A. Arizona Revised Statutes 9-500.05 authorizes the City to enter into a Development Agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property.

B. Developer has a property interest in certain vacant real property located at 18777 N. Scottsdale Road, which contains approximately 21.884 gross acres (the "Property"), which property interest is demonstrated by the purchase and sale agreement between the current owner and Developer, and the current owner's submitted letter of authority allowing Developer to subject the Property to this Agreement. Developer intends to subdivide the Property using a condominium plat and associated declaration (the "Master Condominium Plat" and "Master Condominium Declaration") to create six (6) distinct, and legally identified condominium units and associated common elements within the parcels currently depicted on **Exhibit "A"** (as they are subject to revision during the platting of the Property as such plat may be revised, subject to the limitations set forth in this Agreement) (respectively, "Condominium Parcel 1," "Condominium Parcel 2," "Condominium Parcel 3," "Condominium Parcel 4," "Condominium Parcel 5," and "Condominium Parcel 6") and additional associated common elements (also as it is subject to revision during the platting of the Property as such plat may be revised, subject to the limitations set forth in this Agreement). Condominium Parcel 1 through Condominium Parcel 6 individually may be described as a "Master Condominium Parcel" and collectively as the "Master Condominium Parcels." The Master Condominium Parcels and the associated common elements comprise the Property. Under the terms of the Master Condominium Plat and Master Condominium Declaration, Developer intends the Master Condominium Parcels to be designated as "units" (each a "Master Condominium Unit" and collectively, the "Master Condominium Units") under the Arizona Condominium Act, Arizona Revised Statutes §33-1201, et seq., as amended from time to time, or any successor statute that governs the creation and management of condominiums (the "Condominium Act"), and that "common elements" (as defined in the Condominium Act) may be designated under the Master Condominium Plat and the Master Condominium Declaration (the "Master Common Elements"). The Developer intends to create an association pursuant to the Condominium Act that will serve as the association governing the

relationship among the Master Condominium Parcels and manage the Master Common Elements (the "Master Association").

C. Developer also intends that some or all the Master Condominium Parcels may be further subjected to residential or mixed-use condominium plats and declarations (each a "Residential Condominium Plat" and "Residential Condominium Declaration"). Under each Residential Condominium Plat and associated Residential Condominium Declaration, Developer intends to cause the creation of (i) residential or commercial "units" under the Condominium Act (each a "Residential Condominium Unit" and collectively, "Residential Condominium Units"), and (ii) an association pursuant to the Condominium Act that will serve as the association governing the relationship among the resulting Residential Units (each, a "Residential Association"). Each Residential Association shall manage the "common elements" designated under its associated Residential Condominium Plat and the Residential Condominium Declaration (under each regime the "Residential Common Elements," and collectively under all the residential regimes, the "Residential Common Elements"). Further, each Residential Association will, upon the termination of the period of declarant control, represent its respective Residential Units in the Master Association.

D. The Property is the subject of a rezoning Case No. 20-ZN-2002#4 undertaken by Developer referred to as "Optima McDowell Mountain Village Mixed-Use Development" (the "Rezoning"). To establish the regulatory structure for future development of the Property and the Project (as defined below), in connection with the Rezoning, the Developer has made development applications to the City with associated development plans (collectively, the "Development Plan") that requests the modification from General Commercial, Planned Community District (C-4 PCD) to Planned Community District, Planned Airpark Core – Airpark Mixed Use – Residential with Planned Shared Development Overlay ("PCD PCP – AMU-R – PSD) on a site of 21.884+/- gross acres (18.282+/- net acres). The Rezoning was completed pursuant to the adoption of the new regulatory approvals and stipulations contained in the "Zoning District Map Amendment" (the "Regulatory Approvals"). Pursuant to the Regulatory Approvals, the Project and Property shall be subject to Article VI, Section 6.1401 *et. seq.* of the City's Zoning Ordinance (the "PSD Ordinance").

E. Optima McDowell Mountain Village is intended to comprise six (6) concrete-framed owner-occupied condominium and rental multifamily buildings with stepped and undulating landscaped facades that echo the shapes of the McDowell Mountains, with approximately thirty-six thousand (36,000) square feet of commercial space incorporated into the buildings (the "Project") and an overall maximum of 1,330 dwelling units.

F. Developer desires to utilize available bonus provisions pursuant to the Scottsdale Revised City Code (the "Code"), Appendix B – Basic Zoning Ordinance, Article VII – Supplemental Districts, Section 7.1200 (the "Bonus Development Provisions") to allow increase in certain Development Attributes (as described and defined below) (each a "Bonus") as set forth in the Development Plan. The Regulatory Approvals establish the Floor Area Ratio ("FAR") and the Building Height ("BH") for the Property under the associated development standards. FAR, and BH collectively are referred to in this Agreement as "Development Attributes." Developer requested additional FAR, from 0.8 to 1.96, resulting in an additional 1,110,570 square feet of floor area for the Project, requiring a Bonus payment amount of 15,135,924. Further, the

Developer requested additional BH for the Project of 34 feet, from the 84 feet allowed by right to one hundred eighteen (118) feet, requiring a Bonus payment of \$463,385. Further, the Development Attributes are reflected in a budget for the Property and the Project (the "Development Area Budget") set forth on the attached **Exhibit "B."** The Development Area Budget sets forth the maximum Development Attributes for buildings and other development that may be constructed on each Master Condominium Parcel and, collectively, on the Property.

G. As more fully set forth in this Agreement, in exchange for establishing the Development Attributes in the Development Plan under the Bonus Development Provisions, Developer is required to pay for any increase in FAR and for any increase in BH, pursuant to the terms of the Bonus Development Provisions.

H. Given the size and scope of the Project, the City and Developer seek to allow the Project to benefit from flexibility required by market conditions and, accordingly, the parties acknowledge that the Project may be developed in phases (each a "Phase"), as more fully described in this Agreement.

I. The Developer may be required to construct wastewater improvements as set forth in stipulation 29 of the Stipulations for the Zoning Application that are part of Ordinance No. 4571 (the "Wastewater Improvements"). If the Developer constructs Wastewater Improvements that are included in the City's Infrastructure Improvement Plan ("IIP") as adopted by City's City Council, Developer will be eligible for reimbursement for such IIP improvements under Scottsdale Revised Code Chapter 49, Article III and §49-84. The City and Developer agree that they will negotiate with diligence and promptness in good faith a reasonable Infrastructure Reimbursement Agreement setting forth the terms necessary for the Developer to be reimbursed for those portions of the Wastewater Improvements that are included within the City's IIP.

J. As more fully set forth in this Agreement, in connection with establishing the Development Attributes in the Development Plan, Developer will provide to the City 2,750 acre-feet of water accessible from either the Central Arizona Project canal or a well located within the Salt River Project.

K. The Property previously was made subject to two development agreements, Development Agreement 2002-142-COS dated November 19, 2002, and recorded at Instrument No. 2002-1240138, and Development Agreement 2002-143-COS dated November 19, 2002, and recorded at Instrument No. 2002-1240139 of the Official Records of the Maricopa County Recorder's Office (collectively, the "Prior Development Agreements"). Pursuant to the terms of this Agreement, City and Developer terminate, to the extent not already accomplished, the Prior Development Agreements with respect to the Property, as more fully set forth in this Agreement. This Agreement is not intended to modify the Development Plan for Planning Units II and III of the Stacked 40's as set forth in 2002-142-COS-PCD (as each such term is defined therein).

L. This Agreement is part of the requirements for approval of 20-ZN-2002#4. The Development Plan is on file with the Clerk of the City as declared a public record by Resolution No. 12630 and adopted by Ordinance No. 4571 and incorporated into this Agreement by this reference.

M. This Agreement and the related documents required by this Agreement (collectively the “Related Documents”) are intended to achieve the redevelopment of the Property in accordance with this Agreement and in furtherance of the Development Plan.

N. This Agreement is consistent with the portions of City’s general plan applicable to the Property on the date of this Agreement, including the Greater Airpark Character Area Plan.

O. The City’s governing body has authorized execution of this Agreement by Resolution Number 12631.

In consideration of the above premises, and the mutual promises and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Developer and City agree as follows:

### **AGREEMENT**

1. Recitals. The recitals set forth above are incorporated into this Agreement by reference.

2. Definitions.

2.1 “Owner” means the owner of a fee interest in all or a portion of a Master Condominium Parcel, including the owner of a Master Condominium Unit of such Master Condominium Parcel. For purposes of this Agreement, “Owner shall include the Master Association designated with respect to the Master Common Elements, and each Residential Association with respect to its Residential Common Elements but shall not include the owner of any Residential Unit.

3. Term. The term of this Agreement shall be as follows:

3.1 Commencement. The term of this Agreement shall be effective and commence upon, and only upon, the date this Agreement is approved by the City Council, signed by both parties, all appeal and referendum periods with respect to this Agreement have expired and it has been recorded in the Office of the Maricopa County Recorder (the “Effective Date”). If the City does not record this Agreement once it is approved by the City Council, Developer may do so. To allow for proper administration of the timelines set forth in this Agreement, at the City’s request, the parties, through their respective contract administrator, shall execute a “Confirmation of Effective Date” in a mutually agreeable form within five (5) days of the later of: (i) the date that all appeal and referendum periods, if any, with respect to this Agreement have expired; or (ii) the date this Agreement has been recorded in the Office of the Maricopa County Recorder.

3.2 Term and Termination. Except as otherwise expressly provided herein, the Agreement will continue from the Effective Date for a period of twenty-five (25) years or until all obligations and rights of the parties under this Agreement have been performed, terminated by mutual agreement of the parties, or have expired, whichever is earlier (the “Term”). If the Term expires, the parties need not take any further act to demonstrate that this Agreement is of no further force and effect.

3.3 Early Termination. This Agreement may be terminated by either party only to the extent a termination right may be provided expressly in this Agreement. Upon early termination of this Agreement by mutual agreement of City and Developer, the parties shall execute, acknowledge, and record a notice (the "Termination Notice") confirming that this Agreement has been terminated, except for those representations, warranties, indemnities, and other matters that this Agreement states shall survive the expiration or termination of this Agreement.

3.4 Effect of Termination or Expiration on Regulatory Approvals. Termination or expiration of this Agreement shall have no effect on the Regulatory Approvals, which shall continue to be enforceable according to their terms. Any Termination Notice with respect to this Agreement shall so state.

3.5 Referendum. If the Regulatory Approvals are subject to a referendum that is certified to appear on a City election ballot, Developer may elect to terminate this Agreement by written notice to the City. Moreover, if the Regulatory Approvals are invalidated by a referendum, then this Agreement shall be void *ab initio*.

3.6 Minor Date Adjustments. With the exception of the outside dates for partial payments of the Bonus Amount (as defined below) as set forth in Section 8.2.1 below, dates stated in this Agreement may be extended by mutual written formal consent of City and Developer, given or withheld in their respective sole and absolute discretion. City's City Manager may exercise authority to consent for City to extensions of any date, but such authority is limited to extensions not exceeding one hundred eighty (180) days, each exercised in the City Manager's sole and absolute discretion. Except with respect to a minor date adjustment made pursuant to this Section 3.6, the Term of this Agreement may only be extended by formal recorded mutual written agreement of both parties and approved by the City's City Council.

4. Project & Zoning. Developer's development of the Property and the Project shall comply with the following:

4.1 No Construction Obligation. Developer has no obligation to develop the Property or any portion of the Project; provided however that all further construction of the Project shall be performed in compliance with the Development Plan, Regulatory Approvals and the terms and conditions of this Agreement.

4.2 Phasing. Developer may determine whether and in what order to undertake the development of, and the Master Condominium Parcels and portions of the Master Common Elements comprising, each Phase as set forth in the Development Plan.

4.3 Development Area Budget and Allocation. The Property's total Development Area Budget shall not exceed the maximum Development Attributes specified in the Development Plan approved in the Rezoning and the Development Area Budget attached hereto as **Exhibit "B,"** and, subject to the right of reallocation contained in Section 5 below, the allocation of Development Attributes for each Master Condominium Parcel may not exceed the maximum amount specified in the Development Area Budget for each such Master Condominium Parcel.

4.4 Land Interest Exchange. The parties recognize that the City currently is fee title owner to three (3) parcels of land adjacent to the Property (the "City Parcels") that are encumbered by various easements and other interests of which the Property is the dominant estate. The City Parcels are as legally described and depicted in **Exhibit "C"** hereto. The parties intend that the City Parcels will be incorporated into the Property and that Developer will dedicate various easements and other property rights to City in relation to Developer becoming the underlying fee owner of the City Parcels (such transactions being referred to as the "Land Interest Exchange"). To accomplish this, concurrent with the initial recording of the Master Condominium Plat, the City shall execute a quit claim deed to Developer for the City Parcels substantially in accordance with the form set forth in **Exhibit "D"** (the "City Quit Claim Deed"). Prior to the recording of the City Quit Claim Deed, Developer shall execute a quit claim deed or other form of release as necessary to relinquish any existing easements or encumbrances Developer may possess in relation to the City Parcels (the "Release"). In exchange for the City Quit Claim Deed of the City Parcels, Developer agrees to include within the initial Master Condominium Plat a dedication to the City of the legal interests as set forth and depicted on **Exhibit "E"** hereto (the "City Dedications").

4.5 Order of Recording. The City shall be responsible for recording the documents for the Land Interest Exchange. The documents effecting the Land Interest Exchange shall be recorded concurrently in the following order: 1) the Release; 2) the City Quit Claim Deed; and 3) the Master Condominium Plat including the City Dedications.

4.6 Effect of Land Interest Exchange. The parties agree that the Development Plan for the Property as adopted through Ordinance No. 4571 and Resolution No. 12630 reflects the parties' anticipated ownership by Developer of the City Parcels as set forth herein.

4.7 Effect of Drainage Easement. The parties acknowledge that included in the Land Interest Exchange will be portions of the Property subject to drainage facilities and that among the City Dedications will be certain drainage and flood control easement(s) in favor of the City as more fully set forth in **Exhibit "E"**. Developer shall remain responsible for maintenance and repair of the drainage facilities contained thereon as more fully provided therein. Except for the proposed culvert at the southeast corner of the Property per the zoning level preliminary grading and drainage plan, the portions of the wash located on the northeast, east, and southeast sides of the parcel that currently are not enclosed within existing box culverts or storm drains shall generally remain as open or non-enclosed facilities.

4.8 Planned Shared Development Shared Facilities. Developer shall establish the Master Association as a property management association to maintain all Master Common Elements, shared facilities, or community-owned property shown on the Development Plan for the Property as described in the PSD Ordinance (collectively, "Shared Facilities"), which the City acknowledges that Developer intends to do through the Master Condominium Declaration. Developer shall obligate such Master Association to record a Master Declaration of Easements, Covenants, Conditions and Restrictions ("ECR") with the Maricopa County Recorder's Office identifying how such Shared Facilities will be maintained, which the City acknowledges that Developer intends to fulfill by adopting in the form of the Master Condominium Declaration.

4.9 PSD Indemnity. In addition to all other obligations hereunder, the Owners, Developer (and all persons claiming through Developer or claiming rights under this Agreement), and existing and future Owners of Master Condominium Parcels within the Property's boundaries,

and each Residential Association, shall indemnify and hold harmless the City, its employees, agents and officials from any and all claims, demands, suits, judgments, assessments, proceedings, or liabilities of any kind, including reasonable attorney's fees and costs, that may arise from any person(s)/entity(ies) owning any part of the Property which they may bring against the City resulting from the development or division of the Property within the PSD Ordinance for the Property. Further, the Property Manager (as defined below) shall indemnify and hold harmless the City, its employees, agents and officials harmless from any and all claims, demands, suits, judgments, assessments, proceedings, or liabilities of any kind, including reasonable attorney's fees and costs, that may that may be asserted against the City, that arise from any person(s)/entity(ies) owning any part of the Property and that are related to the development or the division of the Property.

5. Transfer of Development Attributes.

5.1 Development Attributes. The Development Plan approved in the Rezoning establishes the Development Area Budget allocations and determines the development standards applicable under the PSD Ordinance for the Property.

5.1.1 Initial Allocations of Development Attributes. Developer and City acknowledge that the Development Plan and Development Area Budget approved as part of Rezoning already specifies the maximum allocation of Development Attributes for the Master Condominium Parcels and the public hearing requirements for this allocation have been met in connection with the Rezoning. This initial allocation has been memorialized by this Agreement as set forth on Exhibit B. For any change to the initial allocation of the Development Attributes from and after the approval of the Rezoning, such allocation shall be memorialized through a "Development Attributes Allocation Form," in a form satisfactory to the City Attorney and the Zoning Administrator for each Master Condominium Parcel that specifies the applicable Development Attributes allocated to each Master Condominium Parcel. Developer shall submit the Development Attributes Allocation Form to the City for the City's expeditious recordation in the Maricopa County Recorders' Office. If the initial allocation of Development Attributes is changed, no development applications, building permits, or other City approvals for any Master Condominium Parcel will be approved until the applicable Development Attributes Allocation Form is recorded as provided in this subsection. If an error is made on any form, upon notice by Developer or the City to the other, the City and Developer shall cause a revised Development Attributes Allocation Form reflecting the correct allocated Development Attributes associated with each Master Condominium Parcel to be prepared by Developer, provided to the City, and to be expeditiously recorded as set forth in this subsection.

5.1.2 Reallocations of Development Attributes among Master Condominium Parcels. Reallocations of Development Attributes among Master Condominium Parcels may be approved by the Zoning Administrator on behalf of the City. City approval shall not be required if Developer reallocates dwelling units among different Master Condominium Parcels so long as the overall maximum is not changed. No BH may be increased beyond the maximum height stated in Exhibit B without further City Council approval. All property Owners, all lienholders, and all interested persons holding an interest in real property for any Master Condominium Parcel for which Development Attributes are to be reallocated pursuant to the Development Area Budget shall sign a Development Attributes Allocation Form in a form

satisfactory to the City Attorney and the Zoning Administrator and submit it to the City for the City's expeditious recordation in the Maricopa County Records' Office. No development applications, building permits, or other city approvals will be approved until the applicable revised Development Attributes Allocation Form is recorded as provided in this subsection. If an error is made on any form, upon notice by an Owner or the City to the other, the City and such Owner shall cause a revised Development Attributes Allocation Form reflecting the correct allocated Development Attributes associated with each Master Condominium Parcel to be prepared by such Owner, provided to the City, and to be expeditiously recorded as set forth in this subsection.

5.1.3 Division into Child Parcels. The Developer may divide a Master Condominium Parcel into two or more smaller parcels (each, a "Child Parcel") and allocate Development Attributes to, and determine the development standards under, the PSD Ordinance for, each Child Parcel, but only subject to the terms of Section 5.1.1. The total Development Attributes allocated to all Child Parcels following such division shall not exceed, subject to decision by the City pursuant to Section 5.1.1, the amount of Development Attributes allocated to the initial underlying Master Condominium Parcel, unless Developer allocates additional, unallocated Development Attributes from the Development Area Budget to such Child Parcels.

5.1.4 Combination of Parcels. The Developer may combine two or more Master Condominium Parcels, including two or more previously created Child Parcels, into one parcel (a "Combined Parcel") and allocate Development Attributes to the Combined Parcel. The total Development Attributes allocated to the Combined Parcel shall not exceed the total amount of Development Attributes previously allocated to the predecessor parcels, including previously created Child Parcels, comprising the Combined Parcel, unless Developer transfers additional development rights to such Combined Parcel pursuant to Section 5.1.1.

5.1.5 Sale of Condominium Parcels. With the exception of any security interest provided to a lender, Developer shall not sell, transfer or otherwise convey any Master Condominium Parcel or Child Parcel to a third-party without first having provided to City a Development Attributes Allocation Form clearly indicating the total number of dwelling units allocated to such Master Condominium Parcel or Child Parcel that is the subject of the sale, transfer or conveyance.

## 6. City Contact and Property Manager.

6.1 City Contact. City's Contract Administrator shall be the Zoning Administrator or designee.

6.2 Appointment of Property Manager. Developer and its assigns shall appoint one or more individuals or entities to be a "Property Manager" with respect to the Property or any portion thereof (each a "Property Manager"). Developer and its assigns may appoint the Master Association or an Owner of the Property or any portion thereof as such Property Manager. Upon any person or entity being appointed a Property Manager with respect to the Property or any portion thereof, Developer or its assigns shall give the City notice of such appointment and the name and contact address and other information required for notice in this Agreement. Until notice is provided to the City by Developer otherwise, Developer shall be the Property Manager for all purposes under this Agreement.



6.3 Responsibility of Property Manager. The Property Manager shall be responsible for complying with all City requirements established in the PSD Ordinance (“City Requirements”) in a timely and professional manner and maintaining and repairing the Shared Facilities in accordance with the City Requirements.

6.4 Assurance of a Property Manager. Developer, its assigns, and all present and future property Owners shall assure that the Property shall always have an appointed Property Manager, and that this Property Manager shall agree to indemnify the City as required by Section 4.9 of this Agreement and Section 6.1406 of the Zoning Ordinance of the City of Scottsdale. If the Property has no designated Property Manager, and such failure continues uncured for fifteen days after written notice thereof from the City to the Owners, the City shall deem all property Owners to be in default under this Agreement. Developer and its successors and assigns shall have the right to replace the Property Manager with notice to the City pursuant to Section 18.7.

6.5 Survival. The obligations set forth in this Section 6 shall survive the termination of this Agreement as long as the Property is developed with a PSD Ordinance overlay district.

7. Declaration of Easements, Covenants, Conditions & Restrictions.

7.1 ECRs. The ECRs shall address the following to the City's satisfaction:

7.1.1 Responsibility for Shared Facilities. Developer understands that (a) it may create certain common area improvements on the Property that are Shared Facilities, and (b) each Owner must pay assessments for complying with all City Requirements, and for maintaining and repairing the Shared Facilities as reasonably determined necessary by the City, as provided in the Master Condominium Declaration.

7.1.2 Ownership of Shared Facilities. All Shared Facilities, if any, shall be identified in the ECRs. If some of the Shared Facilities are to be shared by the Owners, then the ECRs shall identify whether one or more of the Owners or the Master Association shall be responsible for such Shared Facilities.

7.1.3 Assessments. The Property Manager shall have authority to assess and collect fees for complying with City Requirements and for maintaining and repairing the Shared Facilities as provided in the Master Condominium Declaration.

7.2 Duration. The ECRs shall remain in existence as long as the Property is developed with a PSD Ordinance overlay district.

7.2.1 Amendments. Except with the City's prior written consent, the ECRs may not be amended to alter the provisions that require the Owners or the Master Association to share responsibility for maintaining and repairing the Shared Facilities.

7.2.2 Delivery. A copy of the ECRs will have been delivered to the City prior to the issuance of any building permits for vertical development with respect to the Property.

8. Bonus Development Provisions and Payment. Pursuant to the Bonus Development Provisions, Developer has elected to utilize available bonus provisions to obtain additional FAR

(as allowed under the Planned Airpark Core Development) in certain locations as approved in the Development Plan and rezoning General Provisions, case number 20-ZN-2002#4. Additionally, Developer will gain additional BH. In exchange for establishing the additional FAR and the increased BH in the Development Plan and pursuant to the Bonus Development Provisions, Developer shall pay the “Bonus Amount” as determined pursuant to this Section. The parties acknowledge that no Dwelling Unit Capacity or Gross Floor Area bonuses are required under the Bonus Development Provisions with respect to the Development Plan.

8.1 Developer’s Additional Terms Related to the Bonus Amount. Pursuant to Section B of the Bonus Development Provisions, the parties agree that the Bonus Development Provisions apply to the Project, and Developer is required to pay the Bonus Amount as an in-lieu cash payment to the “Greater Airpark Special Improvement Trust Fund” pursuant to Scottsdale Zoning Ordinance, Section 7.1200, Section C9 (the “Trust Fund”).

8.2 Determination of Bonus Amount. The Bonus Amount shall be determined according to the formula set forth in the Bonus Development Provisions. Subject to the outside dates for partial payments of the Bonus Amount as set forth in Section 8.2.1 below, City and Developer agree that Developer shall pay to the Trust Fund at the time of and as a condition to the City’s issuance of the building permit for each building within each Phase such portion of the Bonus Amount as relates to the development of such building within such Phase based upon the bonus FAR and bonus BH to be used in such building. In any event, such portion of the Bonus Amount as relates to the development of the first building must be paid no later than the issuance of the first grading or site preparation permit for the Project. Further, the last day a payment can be made without an increase in the unpaid amount of the Bonus Amount is December 31, 2022, and any such unpaid Bonus Amount after December 31, 2022, is subject to being increased. Specifically, if all or any part of the Bonus Amount has not been paid or deemed to be paid by December 31, 2022, any unpaid amount shall increase on January 1, 2023, and annually thereafter until paid, by an escalator factor of 3.5% in accordance with the following formula:

$$A = P(1 + 0.035)^{CY-2022}$$

Where: A = Dollar amount to be paid

P = Unpaid amount of Bonus Amount

CY = Current year

8.2.1. Outside Dates for Partial Payments of Bonus Amount. Regardless of whether Developer has submitted for any building, grading or site preparation permits, Developer shall make the following partial payments of the Bonus Amount (as calculated as of the Effective Date other than with respect to subparagraph f below):

a) By no later than the second anniversary of the Effective Date, an aggregate amount equal to 16.67% of such Bonus Amount;

b) By no later than the third anniversary of the Effective Date, an aggregate amount equal to 33.34% of such Bonus Amount;

c) By no later than the fourth anniversary of the Effective Date, an aggregate amount equal to 50.01% of such Bonus Amount;

d) By no later than the fifth anniversary of the Effective Date, an aggregate amount equal to 66.68% of such Bonus Amount;

e) By no later than the sixth anniversary of the Effective Date, an aggregate amount equal to 83.35% of such Bonus Amount; and

f) By no later than the seventh anniversary of the Effective Date, an aggregate amount equal to the total of the Bonus Amount.

8.2.2. Partial Payments Applied as Credits for Future Development. Any partial payments of the Bonus Amount made pursuant to Section 8.2.1 above and unrelated to the issuance of an applicable permit may be applied by Developer as a credit toward the payment of any portion of the Bonus Amount due as a result of Developer requesting permits from the City as set forth in this Section 8.2.

8.2.3. Effect of Failure to Make Minimum Partial Bonus Payments. If Developer fails to pay the minimum partial payments of the Bonus Amount as set forth in Section 8.2.1 above, Developer's right to have additional BH and additional FAR shall be terminated as to any portion of the Project for which the required payments of the Bonus Amount have not yet been paid for as of the time of the failure. Notwithstanding the foregoing, Developer shall be entitled to retain any additional BH and additional FAR paid for in a timely fashion prior to such failure. Once any such additional BH or additional FAR are terminated as provided above, no such additional BH or additional FAR may be provided to Developer for the Project unless approved by City Council.

## 9. Special Benefits for City.

9.1 Termination of Prior Development Agreements. To the extent not already accomplished under the terms of the Prior Development Agreements or the Partial Termination and Release of Development Agreement dated May 12, 2003, and recorded that same date at Instrument No. 2003-0602832 in the Official Records of the Maricopa County Recorder's Office, upon the recording of this Agreement, the City and Developer hereby agree to terminate the Prior Development Agreements and acknowledge that the Prior Development Agreements shall, be deemed to be terminated and of no further force or effect with respect to the Property by recording the Prior Development Agreement Termination in the form and substance of **Exhibit "F."**

9.2 Water Rights. Developer will provide to the City the right to withdraw 2,750 acre-feet of water accessible to existing City Water Resources facilities from either (i) the Central Arizona Project canal or (ii) a well located within the Salt River Project, in either case by no later than the City's issuance of the initial building permit for the first building to be constructed as part of the Project. The manner and timing of delivery shall be in accordance with approval of the Water Resources Executive Director or designee.

10. Breach & Remedies. Developer shall comply with, perform, and do each performance and thing required of Developer under this Agreement. Developer's failure to do so shall be a breach by Developer of this Agreement if not cured within the notice and cure periods set forth in Section 11 below.

11. Events of Default. Any Owner or Property Manager shall be in default (an “Event of Default”) if such Owner, with respect to the Owner’s interest in any Master Condominium Parcel, or the Property Manager and Owners, with respect to Shared Facilities, fails or neglects timely and completely to do or perform or observe any material provision of this Agreement, the Regulatory Approvals, or the Development Area Budget, and such failure or neglect continues for a period of one hundred twenty (120) days after City has notified the defaulting Owner(s) and/or Property Manager(s) in writing of such failure or neglect. If the defaulting Owner(s) and/or Property Manager(s) begins to cure the default within this time-period, the one hundred twenty (120) day period shall be extended an additional sixty (60) days upon request given by notice to City prior to the end of the one hundred twenty (120) day period, or such later time as may be granted by the City to allow the cure to be affected.

12. City's Remedies. Upon the occurrence of any material Event of Default or at any time thereafter while such Event of Default remains uncured, City may, at its option and from time to time, exercise any, all, or any combination of the following cumulative remedies in any order and repetitively at City's option with respect to any and all defaulting Owner(s) and/or Property Manager(s):

12.1 Until the default is cured, issue a stop work order and/or refuse to issue any permits or process development applications for the Property, as to Shared Facilities, or, in the event the Property is divided into separate parcels, issue a stop work order and/or refuse to issue any permits or process any development applications for any parcel that is subject of the Event of Default.

12.2 Abate at an applicable defaulting Owner’s expense any violation of this Agreement.

12.3 Be excused without any liability to the applicable defaulting Owner therefor from further performance of any or all of City's obligations under this Agreement.

12.4 Insist upon each applicable defaulting Owner’s full and faithful performance under this Agreement during the entire remaining term of this Agreement.

12.5 Assert, exercise or otherwise pursue at each applicable defaulting Owner’s expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

12.6 Notwithstanding the foregoing, an applicable defaulting Owner shall not be liable for special, consequential, punitive, or other exemplary or multiple damages.

13. City Default and Developer's Remedies. Upon any material breach of this Agreement by City not cured within one hundred twenty (120) days after notice from an Owner, such Owner may pursue any and all remedies, legal, equitable or otherwise, to which such Owner may be entitled. Notwithstanding the preceding sentence or anything else in this Agreement and as a condition of City's willingness to enter into this Agreement, the following limits shall apply to this Agreement:

13.1 City shall not be liable for any special, consequential, punitive, or other exemplary or multiple damages.

13.2 Developer hereby unconditionally and irrevocably waives on behalf of itself and all persons claiming through Developer or through this Agreement or under or related to this Agreement any remedies inconsistent with these limitations.

13.3 All limitations on Developer's remedies shall also apply to all remedies against City's officers, employees and other agents and representatives and any other person for whom City may in any event be liable for any reason.

13.4 All limitations on Developer's remedies shall apply to Developer and to any person otherwise asserting against City, any claim whatsoever related to this Agreement.

14. Non-waiver and City Contract Administrator Authority. No failure by City or Developer to demand any performance required of the other under this Agreement, and no acceptance by City or Developer of any imperfect or partial performance under this Agreement, shall excuse such performance, or waive or impair in any way the other's ability to insist, prospectively and retroactively upon full compliance with this Agreement. Only the City's Zoning Administrator or designee shall be authorized to administer this Agreement for City or speak for City regarding this Agreement, except for the actions of the City Manager as authorized under Section 3.6 above. Further, nothing in this Agreement or any ordinance with respect to it or the zoning associated with the Project shall be deemed to reduce or eliminate the Zoning Administrator's authority provided under A.R.S. Section 9-462.04.A.4, which authority may be exercised in the ordinary course.

15. Compliance with Law. Developer shall comply with all federal, state, county and local laws, ordinances, regulations or other rules or policies that affect the Property as are now in effect or as may hereafter be adopted or amended.

16. Assignability. This Agreement may be assigned or transferred by the Developer (or any of the entities that comprise "Developer" with respect to such entity's interest herein), in whole or in part, by written instrument, to the Master Association or any subsequent Owner of all or any portion of the Property. Notice of any transfer or assignment in accordance with this paragraph shall be provided by Developer or the transferor entity (or its successor or assign) to the City. No lender or mortgagee shall have any obligation or liability under this Agreement unless such lender or mortgagee acquires title to a portion of the Property, in which event, such lender or mortgagee shall have liability only for the failure of such lender or mortgagee to comply with any obligation under this Agreement with respect to the portion of the Property owned by such lender or mortgagee during the period of such lender's or mortgagee's ownership of such portion of the Property, and the liability of such lender or mortgagee shall be limited to its interest in the Property.

17. Unified Project Intent. City is entitled to hold the Developer (or its successors and assigns, if applicable) responsible for all performances under this Agreement. City and Developer expressly do not intend that Developer's rights under this Agreement be divisible, except as already described in this Agreement, for any reason into multiple contracts, agreements or other arrangements between City and numerous Property owners. City and Developer intend that City only be obligated to deal with one designated representative of all of the entities standing in the position of Developer (the "Developer's Designated Representative") from time to time and not be burdened with any management, maintenance or other responsibilities related to development or occupation of the Property by multiple entities, such as resolving or being hindered by

disagreements between entities regarding Developer's performance of its duties under this Agreement, and that City not be burdened by usage, financial or other issues among various persons using the Property pursuant to this Agreement. All those duties are to be performed by Developer (or its successors or assigns, if applicable), which is responsible to see that all persons developing or using the Property, including without limitation any owners' associations and their members, resolve among themselves their respective responsibilities for all performances under this Agreement, none of which limits or otherwise affects City's rights under this Agreement. Developer may change the Developer's Designated Representative from time to time by written notice to City. Developer hereby designates David Hovey, Jr. as the Developer's Designated Representative under this Agreement, until further written notice from Developer is given to City.

18. Miscellaneous. The following additional provisions apply to this Agreement:

18.1 Amendments. This Agreement may not be amended except by a formal writing executed by all the parties.

18.2 Severability. If any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.

18.3 Conflicts of interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by law. This Agreement is subject to the cancellation provisions of A.R.S. Section 38-511.

18.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, or similar relationship between the parties.

18.5 Authority. Each party to this Agreement represents to the other that it has full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

18.6 Non-liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount that may become due to any party or successor, or with respect to any obligation of City related to this Agreement.

18.7 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery, addressed to:

If to City:

City of Scottsdale  
7447 E. Indian School Rd., Suite 105  
Scottsdale, AZ 85251

Copy to: City Attorney  
City of Scottsdale  
3939 N. Drinkwater Boulevard  
Scottsdale, AZ 85251

If to Developer and/or Property Manager: McDowell Mountain Village Declarant LLC  
7157 E. Rancho Vista Drive, Suite 109  
Scottsdale, AZ 85251

Copy to: David Hovey, Jr.  
630 Vernon Avenue  
Glencoe, IL 60022  
and  
7147 E. Rancho Vista Drive, Suite 104  
Scottsdale, AZ 85251

By notice from time to time in accordance herewith, any party may designate any other street address or addresses as its address or addresses for receiving notice hereunder. Service of any notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding Saturday, Sunday, and legal holidays) after the notice is deposited in the United States mail. Service of any notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive.

18.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

18.9 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City.

18.10 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

18.11 No Third-Party Beneficiaries. The City, the Developer, the Master Association, a Residential Association, and any other Owner of any portion of the Property, lenders holding liens or mortgages of an Owner against a portion of the Property, and their successors and assigns are the sole beneficiaries of this Agreement. No other person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties who are not beneficiaries of this Agreement for any approval of plans, Developer's construction of improvements, Developer's negligence, Developer's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement. Specifically, for the purposes of this Agreement, only each Residential Association, and no owner of a Residential Unit, shall be treated as an Owner, and the individual owners of

Residential Units may not assert any claim for rights, titles, or interests to the rights or privileges set forth in this Agreement, specifically are not third-party beneficiaries of this Agreement, and may not assert any claim for damages or other remedy except as may be held or determined by a Residential Association as an "Owner" under this Agreement.

18.12 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

18.13 Attorneys' Fees. If legal action is brought by any party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.

18.14 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

18.15 Venue & Jurisdiction. Except where Arbitration is required under this Agreement, legal actions regarding this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and other requirements of City's claims procedures from time to time.

18.16 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

ATTEST:

By: Ben Lane  
Ben Lane, City Clerk

**CITY OF SCOTTSDALE**  
an Arizona municipal corporation

By: David D. Ortega  
David D. Ortega, Mayor

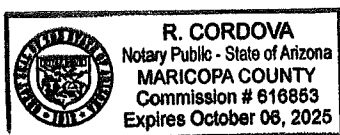
APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

Sherry R. Scott, City Attorney  
Eric C. Anderson, Sr. Assistant City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 14 day of December, 2022, by David D. Ortega, Mayor of the City of Scottsdale, an Arizona municipal corporation.

My Commission Expires: October 6, 2025  
R. Cordova  
Notary Public





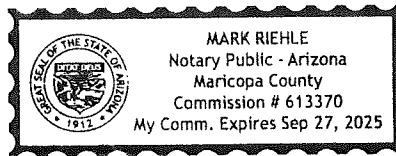
DEVELOPER:  
MCDOWELL MOUNTAIN VILLAGE DECLARANT LLC  
a Delaware limited liability company

David C. Hovey, Jr.  
David C. Hovey, Jr.  
President

STATE OF ARIZONA        )  
  )  
County of Maricopa        )

This instrument was acknowledged before me on the 14<sup>th</sup> day of December, 2022, by David C. Hovey, Jr., President of McDowell Mountain Village Declarant LLC, a Delaware limited liability company, on behalf of the Company.

My Commission Expires: Sep. 27, 2025 Mark Riehle  
Notary Public



**EXHIBIT "A"****MASTER CONDOMINIUM PARCELS**

The following is the legal description for the Property other than that portion of the Property consisting of the City Parcels.

A PARCEL OF LAND LYING WITHIN SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;

THENCE ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 68.49 FEET TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS, AND THE POINT OF BEGINNING;

THENCE LEAVING SAID SOUTH LINE ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 625.29 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 52 SECONDS EAST, A DISTANCE OF 25.00 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 08 SECONDS WEST, A DISTANCE OF 124.88 FEET;

THENCE NORTH 50 DEGREES 34 MINUTES 37 SECONDS EAST, A DISTANCE OF 71.10 FEET;

THENCE SOUTH 79 DEGREES 08 MINUTES 03 SECONDS EAST, A DISTANCE OF 1176.65 FEET TO THE EAST LINE OF THE WEST HALF OF THE WEST HALF OF SAID SECTION 26;

THENCE LEAVING SAID EASTERLY LINE ALONG SAID EAST LINE, SOUTH 00 DEGREES 02 MINUTES 11 SECONDS EAST, A DISTANCE OF 573.88 FEET TO SAID SOUTH LINE OF SAID SECTION;

THENCE LEAVING SAID EAST LINE ALONG SAID SOUTH LINE, NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 1251.89 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A UNITED STATES GENERAL LAND OFFICE BRASS CAP MARKING THE SOUTHWEST CORNER OF SECTION 26, BEING NORTH 89 DEGREES

58 MINUTES 35 SECONDS WEST 2641.00 FEET FROM A 3/4 INCH REBAR MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 26;

THENCE ALONG THE WEST LINE OF SAID SECTION 26, NORTH 0 DEGREES 02 MINUTES 26 SECONDS WEST 625.01 FEET TO A POINT BEING SOUTH 0 DEGREES 02 MINUTES 26 SECONDS EAST 2015.76 FEET FROM A MARICOPA COUNTY HIGHWAY BRASS CAP MARKING THE WEST QUARTER CORNER OF SAID SECTION 26;

THENCE NORTH 89 DEGREES 57 MINUTES 34 SECONDS EAST 110.00 FEET TO THE POINT OF BEGINNING ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROUTE 101L (PIMA FREEWAY);

THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 89 DEGREES 57 MINUTES 54 SECONDS WEST 25.00 FEET;

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, SOUTH 01 DEGREES 28 MINUTES 41 SECONDS WEST 50.00 FEET;

THENCE NORTH 27 DEGREES 44 MINUTES 09 SECONDS EAST 56.49 FEET TO THE POINT OF BEGINNING; AND ALSO EXCEPT THAT PART OF SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 26;

THENCE ALONG THE SOUTH LINE OF SAID SECTION, NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 1320.38 FEET, TO THE EAST LINE OF THE WEST HALF OF THE WEST HALF OF SAID SECTION, AND THE POINT OF BEGINNING;

THENCE LEAVING SAID EAST LINE, CONTINUING ALONG SAID SOUTH LINE, NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 256.95 FEET, TO THE BEGINNING OF A NONTANGENT CURVE;

THENCE LEAVING SAID SOUTH LINE, WESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1655.00 FEET, CONCAVE SOUTHERLY, WHOSE RADIUS BEARS SOUTH 14 DEGREES 50 MINUTES 19 SECONDS WEST, THROUGH A CENTRAL ANGLE OF 05 DEGREES 56 MINUTES 54 SECONDS, A DISTANCE OF 171.82 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE;

THENCE NORTH 00 DEGREES 02 MINUTES 11 SECONDS WEST, A DISTANCE OF 39.77 FEET;

THENCE SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 350.00 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 11 SECONDS WEST, A DISTANCE OF 472.51 FEET;

THENCE NORTH 79 DEGREES 08 MINUTES 03 SECONDS WEST, A DISTANCE OF 57.82 FEET;

THENCE NORTH 10 DEGREES 51 MINUTES 57 SECONDS EAST, A DISTANCE OF 10.00 FEET;

THENCE NORTH 79 DEGREES 08 MINUTES 03 SECONDS WEST, A DISTANCE OF 473.18 FEET;

THENCE NORTH 10 DEGREES 51 MINUTES 56 SECONDS EAST, A DISTANCE OF 30.00 FEET, TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS;

THENCE ALONG SAID EASTERLY LINE, SOUTH 79 DEGREES 08 MINUTES 03 SECONDS EAST, A DISTANCE OF 599.67 FEET; TO A POINT ON SAID LINE OF THE WEST HALF OF THE WEST HALF;

THENCE LEAVING SAID EASTERLY LINE, ALONG SAID EAST LINE, SOUTH 00 DEGREES 02 MINUTES 11 SECONDS EAST, A DISTANCE OF 573.88 FEET, TO THE POINT OF BEGINNING;

EXCEPT FROM THIS DESCRIPTION ONLY, THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 26, A B.L.M. BRASS CAP;

THENCE ALONG THE SOUTH LINE OF SAID SECTION, NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 1320.38 FEET, TO THE EAST LINE OF THE WEST HALF OF THE WEST HALF OF SAID SECTION;

THENCE LEAVING SAID SOUTH LINE, ALONG SAID EAST LINE, NORTH 00 DEGREES 02 MINUTES 11 SECONDS WEST, A DISTANCE OF 573.88 FEET, TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS;

THENCE LEAVING SAID EAST LINE, ALONG SAID EASTERLY LINE, NORTH 79 DEGREES 08 MINUTES 03 SECONDS WEST, A DISTANCE OF 429.73 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID EASTERLY LINE, SOUTH 10 DEGREES 51 MINUTES 57 SECONDS WEST, A DISTANCE OF 30.00 FEET;

THENCE NORTH 79 DEGREES 08 MINUTES 03 SECONDS WEST, A DISTANCE OF 37.52 FEET;

THENCE NORTH 10 DEGREES 51 MINUTES 57 SECONDS EAST, A DISTANCE OF 30.00 FEET, TO THE EASTERLY LINE OF SAID PARCEL;

THENCE ALONG SAID EASTERLY LINE, SOUTH 79 DEGREES 08 MINUTES 03 SECONDS EAST, A DISTANCE OF 37.52 FEET TO THE POINT OF BEGINNING;

AND ALSO CONTINUING TO EXCEPT FROM THE ORIGINAL PARCEL:

EXCEPT THAT PORTION SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;  
THENCE ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 68.49 FEET, TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS;

THENCE LEAVING SAID SOUTH LINE, ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 55.02 FEET;  
THENCE LEAVING SAID EASTERLY LINE, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 5.06 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 02 MINUTES 08 SECONDS WEST, A DISTANCE OF 191.48 FEET, TO SAID EASTERLY LINE;

THENCE ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 378.73 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 52 SECONDS EAST, A DISTANCE OF 25.00 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 08 SECONDS WEST, A DISTANCE OF 124.88 FEET;

THENCE NORTH 50 DEGREES 34 MINUTES 36 SECONDS EAST, A DISTANCE OF 25.15 FEET;

THENCE LEAVING SAID EASTERLY LINE, SOUTH 01 DEGREES 42 MINUTES 56 SECONDS WEST, ADISTANCE OF 711.28 FEET;

THENCE NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 32.70 FEET, TO THE POINT OF BEGINNING; AND ALSO  
EXCEPT THAT PORTION OF SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;

THENCE ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89 DEGREES 58 MINUTES 24 SECONDS EAST, A DISTANCE OF 68.49 FEET, TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS;

THENCE LEAVING SAID SOUTH LINE, ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 55.02 FEET;

THENCE LEAVING SAID EASTERLY LINE, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 37.76 FEET, TO THE POINT OF BEGINNING;

THENCE NORTH 01 DEGREES 42 MINUTES 56 SECONDS EAST, A DISTANCE OF 25.01 FEET;

THENCE SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 531.94 FEET, TO THE BEGINNING OF A CURVE;

THENCE EASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1680.00 FEET, CONCAVE SOUTHERLY THROUGH A

CENTRAL ANGLE OF 08 DEGREES 43 MINUTES 49 SECONDS, A DISTANCE OF 255.98 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE;

THENCE SOUTH 00 DEGREES 02 MINUTES 11 SECONDS EAST, A DISTANCE OF 25.30 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE WESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1655.00 FEET, CONCAVE SOUTHERLY, WHOSE RADIUS BEARS SOUTH 08 DEGREES 53 MINUTES 25 SECONDS WEST, THROUGH A CENTRAL ANGLE OF 08 DEGREES 51 MINUTES 51 SECONDS, A DISTANCE OF 256.04 FEET, TO THE CURVE'S END;

THENCE NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 532.68 FEET, TO THE POINT OF BEGINNING; AND ALSO

EXCEPT THAT PORTION OF SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;

THENCE ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 68.49 FEET, TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS, AND THE POINT OF BEGINNING;

THENCE LEAVING SAID SOUTH LINE, ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 55.02 FEET, TO THE NORTH LINE OF A PROPOSED 55 FOOT RIGHT-OF-WAY, OF UNION HILLS DRIVE;

THENCE LEAVING SAID EASTERLY LINE, ALONG SAID NORTH LINE, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 570.44 FEET, TO THE BEGINNING OF A CURVE;

THENCE EASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 1655.00 FEET, CONCAVE SOUTHERLY, THROUGH A CENTRAL ANGLE OF 14 DEGREES 48 MINUTES 45 SECONDS, A DISTANCE OF 427.86 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE, BEING ALSO THE SAID SOUTH LINE OF SAID SECTION 26;

THENCE LEAVING SAID NORTH LINE, NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 994.94 FEET, TO THE POINT OF BEGINNING; AND ALSO

EXCEPT THAT PORTION OF SECTION 26, TOWNSHIP 4 NORTH, RANGE 4 EAST OF THE GILA ANDSALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26;

THENCE ALONG THE SOUTH LINE OF SAID SECTION, SOUTH 89 DEGREES 58 MINUTES 26 SECONDS EAST, A DISTANCE OF 68.49 FEE, TO THE EASTERLY LINE OF PARCEL NO. 7-5398, TRACT NO. 1, AS RECORDED IN INSTRUMENT NO. 2000-0992995, MARICOPA COUNTY RECORDS;

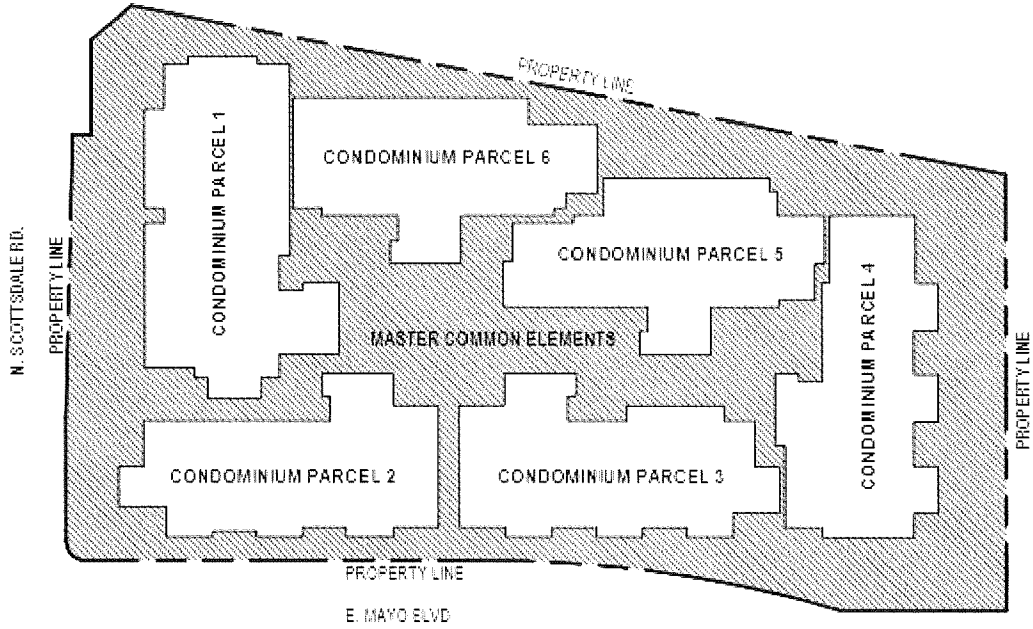
THENCE LEAVING SAID SOUTH LINE, ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 55.02 FEET, TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTH 01 DEGREES 28 MINUTES 38 SECONDS EAST, A DISTANCE OF 191.54 FEET;

THENCE LEAVING SAID EASTERLY LINE, SOUTH 00 DEGREES 02 MINUTES 08 SECONDS EAST, A DISTANCE OF 191.48 FEET;

THENCE NORTH 89 DEGREES 58 MINUTES 26 SECONDS WEST, A DISTANCE OF 5.06 FEET, TO THE POINT OF BEGINNING.

Below is a graphical depiction of each of the six Master Condominium Parcels and their associated Master Common Elements (including the City Parcels).





**EXHIBIT "B"****DEVELOPMENT AREA BUDGET**

- Total Property Size = 18.282+/- acres (net) or 796,363.92 s.f. (net)
- Total Property Size = 21.884+/- acres (gross) or 953,288 s.f. (gross)
- Maximum FAR with Bonus = 1,873,200 square feet

| <b>Area</b>                 | <b>Proposed Initial FAR (s.f.) Allocation</b> | <b>Maximum Building Height (feet)</b> | <b>Proposed Initial Unit Allocation</b> |
|-----------------------------|---|---------------------------------------|---|
| <b>Condominium Parcel 1</b> | 354,035                                       | 118                                   | 251                                     |
| <b>Condominium Parcel 2</b> | 316,571                                       | 118                                   | 230                                     |
| <b>Condominium Parcel 3</b> | 309,078                                       | 118                                   | 209                                     |
| <b>Condominium Parcel 4</b> | 310,951                                       | 118                                   | 211                                     |
| <b>Condominium Parcel 5</b> | 288,473                                       | 118                                   | 209                                     |
| <b>Condominium Parcel 6</b> | 294,092                                       | 118                                   | 220                                     |

Note: The total Proposed FAR for the Condominium Parcels noted above may not exceed the Maximum FAR with Bonus of 1,873,200 sf.

Development Attributes and unit allocations are subject to reallocation as set forth in the Development Agreement.

**EXHIBIT "C"**  
**CITY PARCELS**

**FLOOD CONTROL TRACT**

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at south quarter corner of said Section 26;

THENCE along the south line of said section, North 89°58'26" West, a distance of 1320.38 feet, to the east line of the west half of the west half of said section, and the POINT OF BEGINNING;

THENCE leaving said East line, continuing along said south line, North 89°58'26" West, a distance of 256.95 feet, to the beginning of a non-tangent curve;

THENCE leaving said south line, westerly along said curve, having a radius of 1655.00 feet, concave southerly, whose radius bears South 14°50' 19" West, through a central angle of 05°56'54", a distance of 171.82 feet, to a point of intersection with a non-tangent line;

THENCE North 00°02' 11" West, a distance of 39.77 feet;

THENCE South 89°58'26" East, a distance of 350.00 feet;

THENCE North 00°02' 11" West, a distance of 472.51 feet;

THENCE North 79°08'03" West, a distance of 57.82 feet;

THENCE North 10°51 '57" East, a distance of 1 0.00 feet;

THENCE North 79°08'03" West, a distance of 473.18 feet;

THENCE North 10°51 '56" East, a distance of 30.00 feet, to the Easterly line of Parcel No. 7- 5398, Tract No. 1, as recorded in Instrument No. 2002-0294002, Maricopa County Records;

THENCE along said Easterly line, South 79°08'03" East, a distance of 599.67 feet, to a point on said line of the west half of the west half;

THENCE leaving said easterly line, along said east line, South 00°02' 11" East, a distance of 573.88 feet, to the POINT OF BEGINNING.

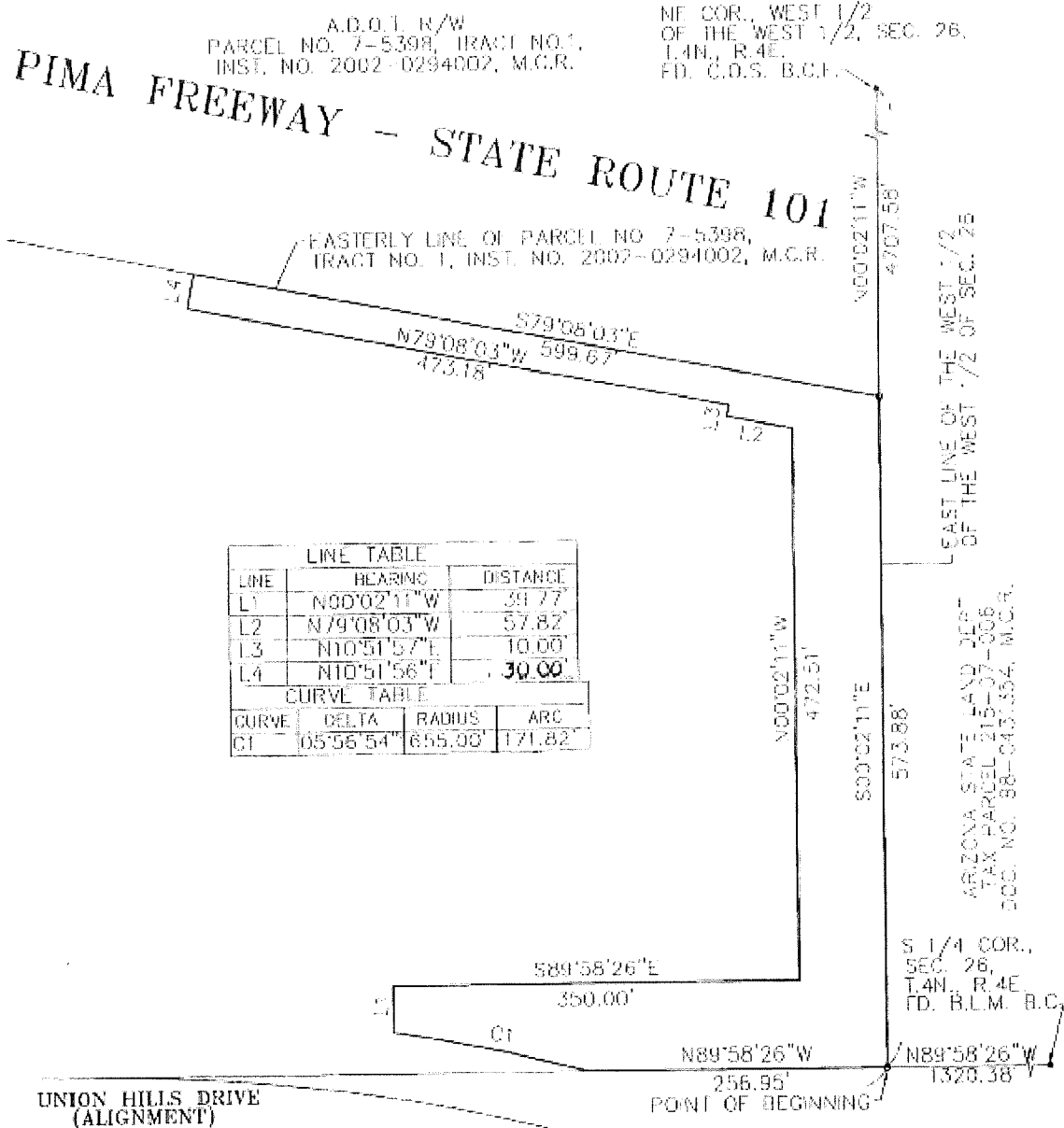
Containing 1.9047 acres, or 82,968 square feet of land, more or less.

Subject to existing rights-of-way and easements.



FLOOD CONTROL TRACT

November 5, 2002  
Wood/Patel #021656, Page 2 of 2



| LINE TABLE |             |          |
|------------|-------------|----------|
| LINE       | BEARING     | DISTANCE |
| L1         | N00°02'11"W | 59.77'   |
| L2         | N79°08'03"W | 57.82'   |
| L3         | N10°51'57"E | 10.00'   |
| L4         | N10°51'56"E | 30.00'   |

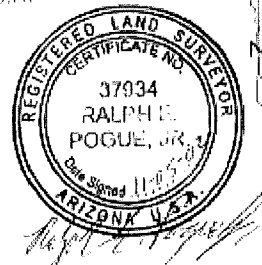
  

| CURVE TABLE |            |         |         |
|-------------|------------|---------|---------|
| CURVE       | DELTA      | RADIUS  | ARC     |
| C1          | 105°58'54" | 655.00' | 171.82' |

A parcel  
Meridian  
Commen  
THENCE  
easterly l  
County R  
THENCE  
THENCE  
BEGINN  
THENCE  
THENCE  
89°57'52'

UNION HILLS DRIVE  
(ALIGNMENT)  
ARIZONA STATE LAND DEPT.  
TAX PARCEL 215-D7-0270  
OCC. NO. 88-0431354, M.C.R.

**WOOD/PATEL**  
2051 West Northern  
Phoenix, AZ 85021  
Phone: (602) 335-8600  
Fax: (602) 335-8580



FLOOD CONTROL TRACT  
REVISED 11-05-2002  
WP# 021656  
PAGE 2 OF 2  
NOT TO SCALE

THENCE North 00°02'08" West, a distance of 124.88 feet;

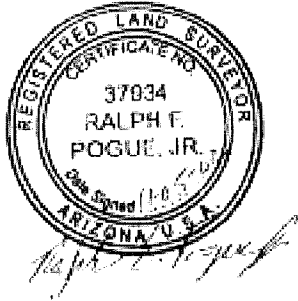
THENCE North 50°34'36" East, a distance of 25.15 feet;

THENCE leaving said easterly line, South 01°42'56" West, a distance of 711.28 feet;

THENCE North 89°58'26" West, a distance of 32.70 feet, to the POINT OF BEGINNING.

Containing 0.5510 acres, or 24,000 square feet of land, more or less.

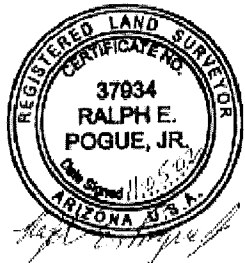
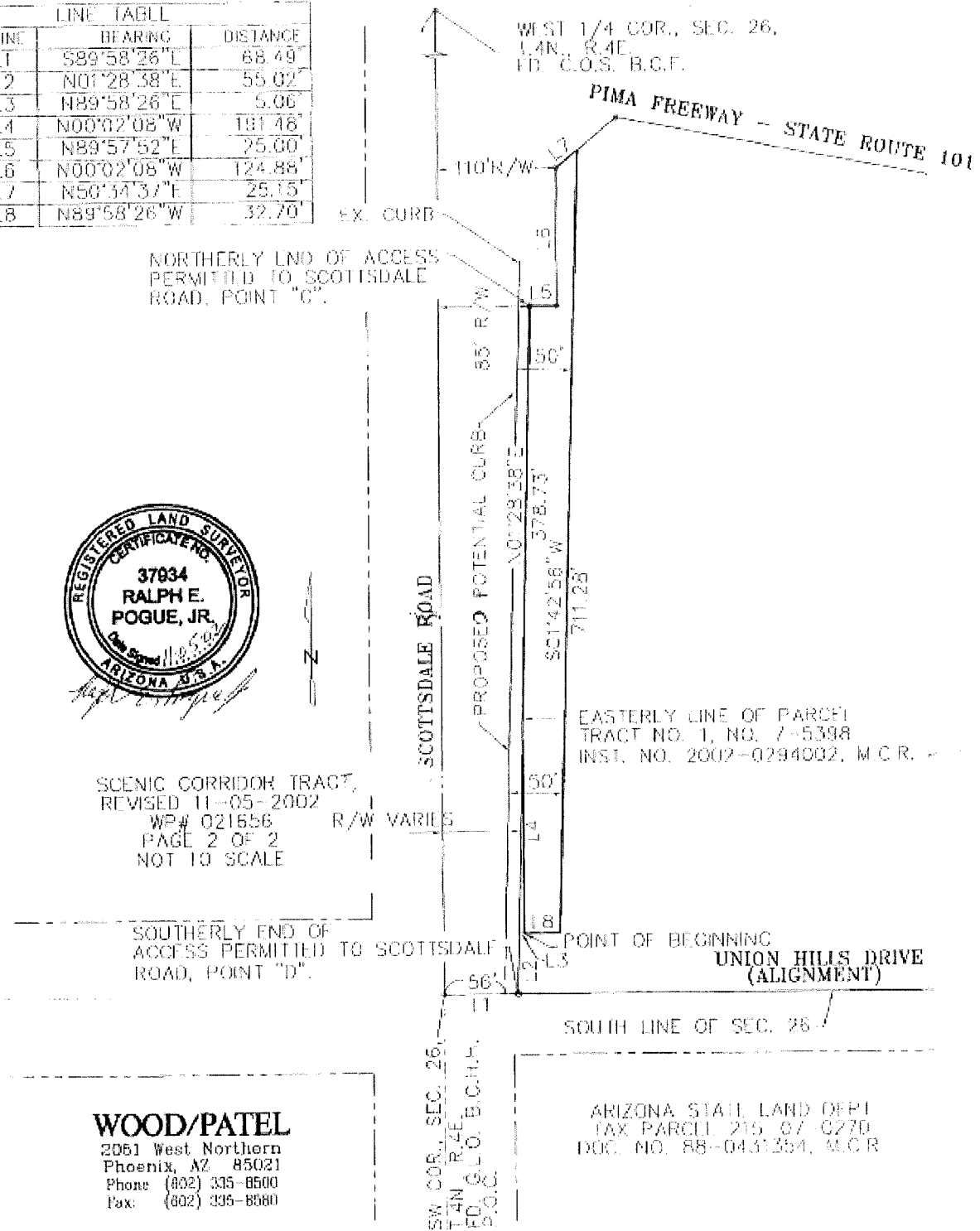
Subject to existing rights-of-way and easements.



SCENIC CORRIDOR TRACT

November 5, 2002  
Wood/Patel #021656, Page 2 of 2

| LINE TABLE |             |          |
|------------|-------------|----------|
| LINE       | BEARING     | DISTANCE |
| L1         | S89°58'26"E | 68.49'   |
| L2         | N01°28'38"E | 55.02'   |
| L3         | N89°58'26"E | 5.06'    |
| L4         | N00°02'08"W | 181.48'  |
| L5         | N89°57'52"E | 25.00'   |
| L6         | N00°02'08"W | 124.88'  |
| L7         | N50°34'37"E | 25.15'   |
| L8         | N89°58'26"W | 32.70'   |



SCENIC CORRIDOR TRACT,  
REVISED 11-05-2002  
WP# 021656  
PAGE 2 OF 2  
NOT TO SCALE

**WOOD/PATEL**  
2051 West Northern  
Phoenix, AZ 85021  
Phone (602) 335-8500  
Fax (602) 335-8580

## LANDSCAPE TRACT

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the southwest corner of said Section 26;

THENCE along the south line of said section, South 89°58'24" East, a distance of 68.49 feet, to the easterly line of Parcel No. 7-5398, Tract No. 1, as recorded in Instrument No. 2002- 0294002, Maricopa County Records;

THENCE leaving said south line, along said easterly line, North 01°28'38" East, a distance of 55.02 feet;

THENCE leaving said easterly line, South 89°58'26" East, a distance of 37.76 feet, to the POINT OF BEGINNING;

THENCE North 01°42'56" East, a distance of 25.01 feet;

THENCE South 89°58'26" East, a distance of 531.94 feet, to the beginning of a curve;

THENCE easterly along said curve, having a radius of 1680.00 feet, concave southerly through a central angle of 08°43'49", a distance of 255.98 feet, to a point of intersection with a non-tangent line;

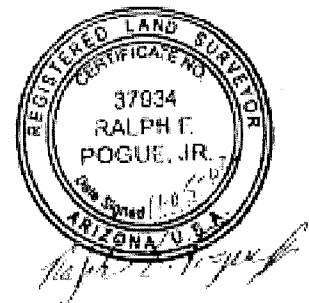
THENCE South 00°02' 11" East, a distance of 25.30 feet, to the beginning of a non-tangent curve;

THENCE westerly along said curve, having a radius of 1655.00 feet, concave southerly, whose radius bears South 08°53'25" West, through a central angle of 08°51'51", a distance of 256.04 feet, to the curve's end;

THENCE North 89°58'26" West, a distance of 532.68 feet, to the POINT OF BEGINNING.

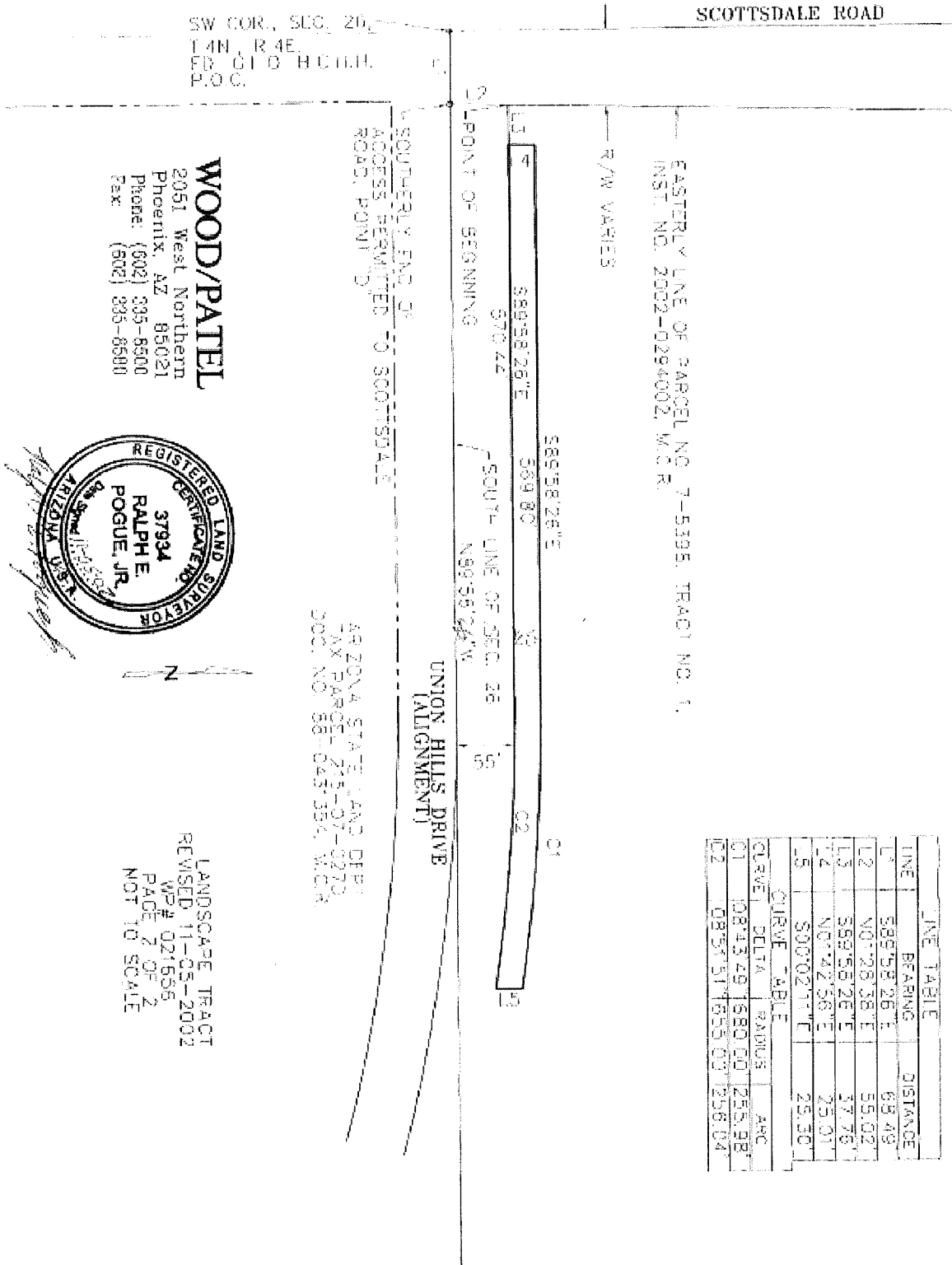
Containing 0.4524 acres, or 19,708 square feet of land, more or less.

Subject to existing rights-of-way and casements.



LANDSCAPE TRACT

November 5, 2002  
Wood/Patel #021656, Page 2 of 2



| LINE | BEARING     | DISTANCE |
|------|-------------|----------|
| L1   | 589°58'26"E | 63.43    |
| L2   | N0°28'38"E  | 55.02    |
| L3   | 589°58'26"E | 37.76    |
| L4   | N00°22'58"E | 25.01    |
| L5   | S00°02'11"E | 25.50    |

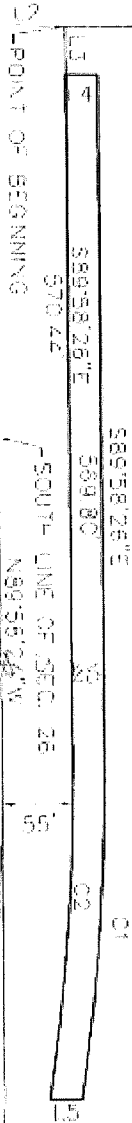
| CURVE | DELTA      | RADIUS | ARC     |
|-------|------------|--------|---------|
| C1    | 108°43'49" | 580.00 | 255.98  |
| C2    | 085°51'45" | 555.00 | 1258.04 |

SW COR., SEC. 20,  
T4N, R 4E,  
R9 G1 D H C111,  
P.O.C.

SCOTTSDALE ROAD

EASTERLY LINE OF PARCEL NO. 7-5195, TRACT NO. 1,  
INST. NO. 2002-0294002, M.C.R.

R/W VARIES

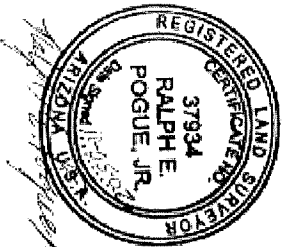


UNION HILLS DRIVE  
(ALIGNMENT)

SOUTHERLY END OF  
ACCESS PERMITTED TO SCOTTSDALE  
ROAD, POINT "D"

ARIZONA STATE LAND DEPT.  
TAX PARCEL 215-07-0270  
DOC. NO. 88-0457554, M.C.R.

**WOOD/PATEL**  
2051 West Northern  
Phoenix, AZ 85021  
Phone: (602) 335-8500  
Fax: (602) 335-8580



LANDSCAPE TRACT  
REVISED 11-05-2002  
WP # 021656  
PAGE 2 OF 2  
NOT TO SCALE

**EXHIBIT "D"****CITY QUIT CLAIM DEED****WHEN RECORDED RETURN TO:**

CITY OF SCOTTSDALE  
 ONE STOP SHOP/RECORDS  
 (Meredith Tessier)  
 7447 East Indian School Road, Suite 100  
 Scottsdale, AZ 85251

Exempt from Affidavit of Value  
 under A.R.S. § 11-1134(A)(3)

(Optima McDowell Mountain Village)  
 (Resolution No. 12631)

**QUITCLAIM DEED**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned, City of Scottsdale, an Arizona municipal corporation, (the "**Grantor**"), hereby quitclaims to McDowell Mountain Village Declarant LLC, a Delaware limited liability company, (the "**Grantee**") all of Grantor's right, title and interest, if any, in and to that certain real property situated in Maricopa County, Arizona, described and depicted on **Exhibit "1"** attached hereto (the "**Property**").

RESERVING HOWEVER unto Grantor, and its successors and assigns, the following non-exclusive easements:

- Vehicular Non-Motorized Access and Scenic Corridor Easement in, on, over, under, and across the real property described and depicted in **Appendix "A"**; and
- Public Use Easement and Landscaping Easement in, on, over, under, and across the real property described and depicted in **Appendix "B"**; and
- Drainage and Flood Control Easement in, on, over, under, and across the real property described and depicted in **Appendix "C"**

for the purposes of construction, operation, maintenance, repair, modification, and replacement of public improvements, including but not limited to roads, sidewalks/shared use pathways, drainage facilities, utilities, landscaping, and associated infrastructure located in and/or adjacent to said easement areas.

Grantor shall also have the right, but not the obligation, to maintain landscaping, cut back and trim such portions of trees and vegetation that obstruct or interfere with the efficient maintenance and operation of the public improvements.

SUBJECT TO: All general and special real property taxes and other assessments, reservations in patents, water rights, claims or title to water and all easements, rights of way, covenants, conditions, restrictions and other non-financial matters as may appear of record, or which would be disclosed by an accurate ALTA survey of the Property.

EXHIBIT "D"

Page 1 of 3

Contract No. 2022-175-COS



The easements reserved herein shall remain in full force and effect until Grantee has submitted, and Grantor, in its sole discretion, has approved, replacement easement dedications set forth on the Grantee's initial Master Condominium Plat (the "Plat") in accordance with that certain Development Agreement known as City of Scottsdale Contract No. 2022-175-COS. Subsequent to the recordation of the approved Plat, or an approved alternate form of easement dedication acceptable to Grantor, and upon Grantee's request, Grantor will execute a release of the easement rights reserved herein.

THE PROPERTY is conveyed AS IS WHERE IS with no warranty, express or implied.

IN WITNESS WHEREOF, the undersigned has executed this Quitclaim Deed as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

ATTEST:

**GRANTOR:**  
THE CITY OF SCOTTSDALE:  
an Arizona municipal corporation

By: \_\_\_\_\_  
Ben Lane, City Clerk

By: \_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Eric C. Anderson, Sr. Asst. City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by David D. Ortega, Mayor, City of Scottsdale, an Arizona municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**ACCEPTED BY:**

**GRANTEE:**

**MCDOWELL MOUNTAIN VILLAGE DECLARANT, LLC**  
a Delaware limited liability company

\_\_\_\_\_  
David C. Hovey, Jr.  
President

STATE OF ARIZONA     )  
                                  )  
County of Maricopa     )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by David C. Hovey, Jr., President of McDowell Mountain Village Declarant LLC, a Delaware limited liability company, on behalf of the Company.

\_\_\_\_\_  
Notary Public

My Commission expires:

**EXHIBIT "1"**  
**ATTACHED TO CITY QUIT CLAIM DEED**

**FLOOD CONTROL TRACT**

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at south quarter corner of said Section 26;

THENCE along the south line of said section, North 89°58'26" West, a distance of 1320.38 feet, to the east line of the west half of the west half of said section, and the POINT OF BEGINNING;

THENCE leaving said East line, continuing along said south line, North 89°58'26" West, a distance of 256.95 feet, to the beginning of a non-tangent curve;

THENCE leaving said south line, westerly along said curve, having a radius of 1655.00 feet, concave southerly, whose radius bears South 14°50' 19" West, through a central angle of 05°56'54", a distance of 171.82 feet, to a point of intersection with a non-tangent line;

THENCE North 00°02' 11" West, a distance of 39.77 feet;

THENCE South 89°58'26" East, a distance of 350.00 feet;

THENCE North 00°02' 11" West, a distance of 472.51 feet;

THENCE North 79°08'03" West, a distance of 57.82 feet;

THENCE North 10°51 '57" East, a distance of 1 0.00 feet;

THENCE North 79°08'03" West, a distance of 473.18 feet;

THENCE North 10°51 '56" East, a distance of 30.00 feet, to the Easterly line of Parcel No. 7- 5398, Tract No. 1, as recorded in Instrument No. 2002-0294002, Maricopa County Records;

THENCE along said Easterly line, South 79°08'03" East, a distance of 599.67 feet, to a point on said line of the west half of the west half;

THENCE leaving said easterly line, along said east line, South 00°02' 11" East, a distance of 573.88 feet, to the POINT OF BEGINNING.

Containing 1.9047 acres, or 82,968 square feet of land, more or less.

Subject to existing rights-of-way and easements.

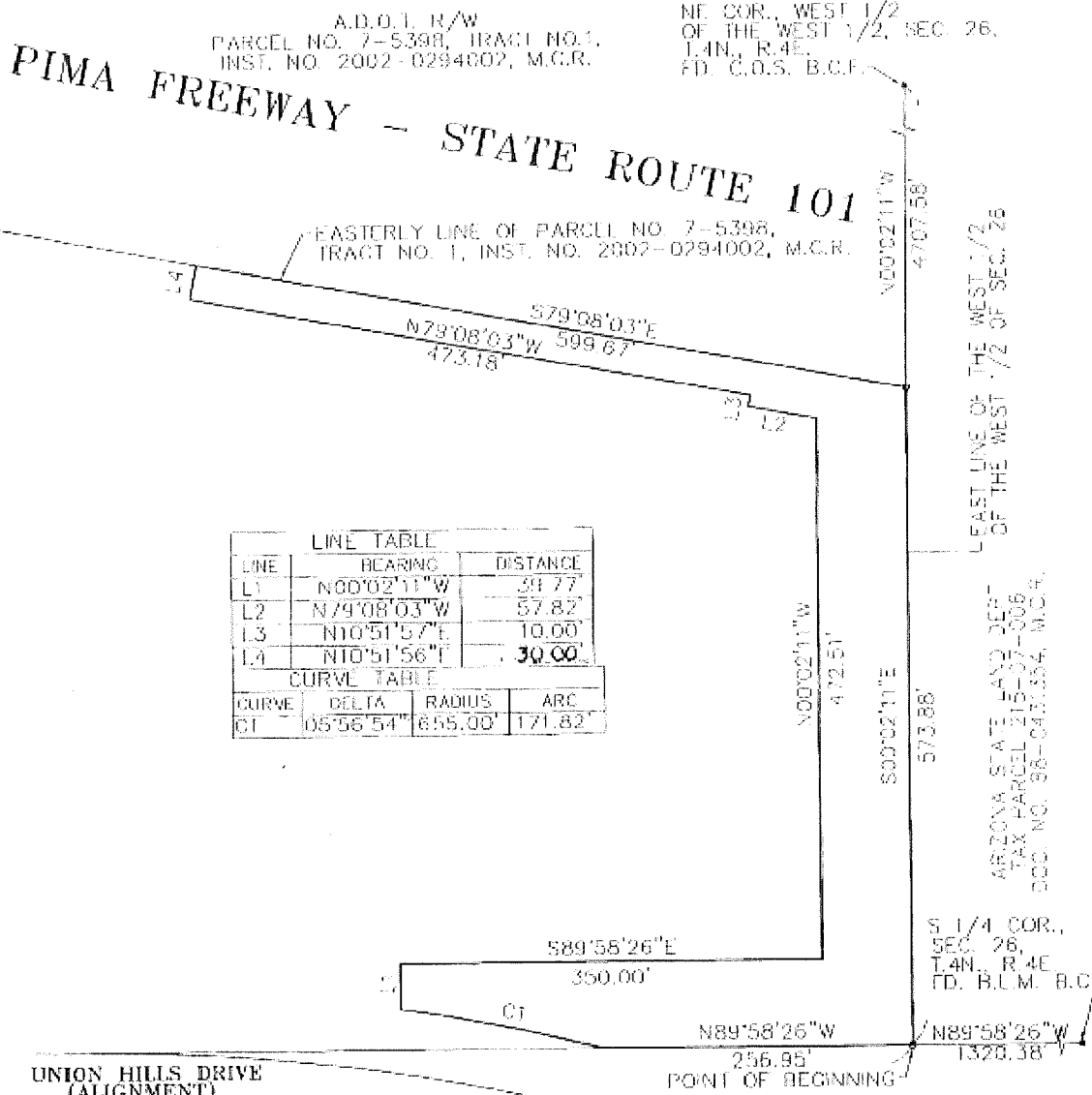


EXHIBIT 1 to Exhibit "D"  
Page 1 of 6

Contract No. 2022-175-COS

FLOOD CONTROL TRACT

November 5, 2002  
Wood/Patel #021656, Page 2 of 2



| LINE TABLE |             |          |
|------------|-------------|----------|
| LINE       | BEARING     | DISTANCE |
| L1         | N00°02'11"W | 39.77'   |
| L2         | N79°08'03"W | 57.82'   |
| L3         | N10°51'57"E | 10.00'   |
| L4         | N10°51'56"E | 30.00'   |

| CURVE TABLE |           |         |         |
|-------------|-----------|---------|---------|
| CURVE       | DELTA     | RADIUS  | ARC     |
| CT          | 06°56'54" | 855.00' | 171.82' |

ARIZONA STATE LAND DEPT.  
TAX PARCEL 215-07-0270  
DOC. NO. 88-0431354, M.C.R.

**WOOD/PATEL**  
2051 West Northern  
Phoenix, AZ 85021  
Phone: (602) 335-8580  
Fax: (602) 335-8580



FLOOD CONTROL TRACT  
REVISED 11-05-2002  
WP# 021656  
PAGE 2 OF 2  
NOT TO SCALE

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the southwest corner of said Section 26;

THENCE along the south line of said section, South 89°58'26" East, a distance of 68.49 feet, to the easterly line of Parcel 7-5398, Tract No. 1, as recorded in Instrument No. 2002- 0294002, Maricopa County Records;

THENCE leaving said south line, along said easterly line, North 01 °28'38" East, a distance of 55.02 feet;

THENCE leaving said easterly line, South 89°58'26" East, a distance of 5.06 feet, to the POINT OF BEGINNING;

THENCE North 00°02'08" West, a distance of 191.48 feet, to said easterly line;

THENCE along the said easterly line, North 01°28'38" East, a distance of 378.73 feet; THENCE North 89°57'52" East, a distance of 25.00 feet;

THENCE North 00°02'08" West, a distance of 124.88 feet;

THENCE North 50°34'36" East, a distance of 25.15 feet;

THENCE leaving said easterly line, South 0 1°42'56" West, a distance of 711.28 feet;

THENCE North 89°58'26" West, a distance of 32.70 feet, to the POINT OF BEGINNING.

Containing 0.5510 acres, or 24,000 square feet of land, more or less.

Subject to existing rights-of-way and easements.

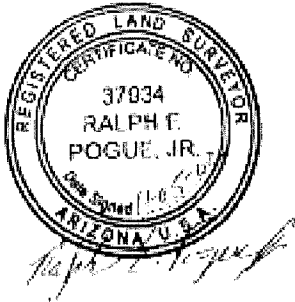


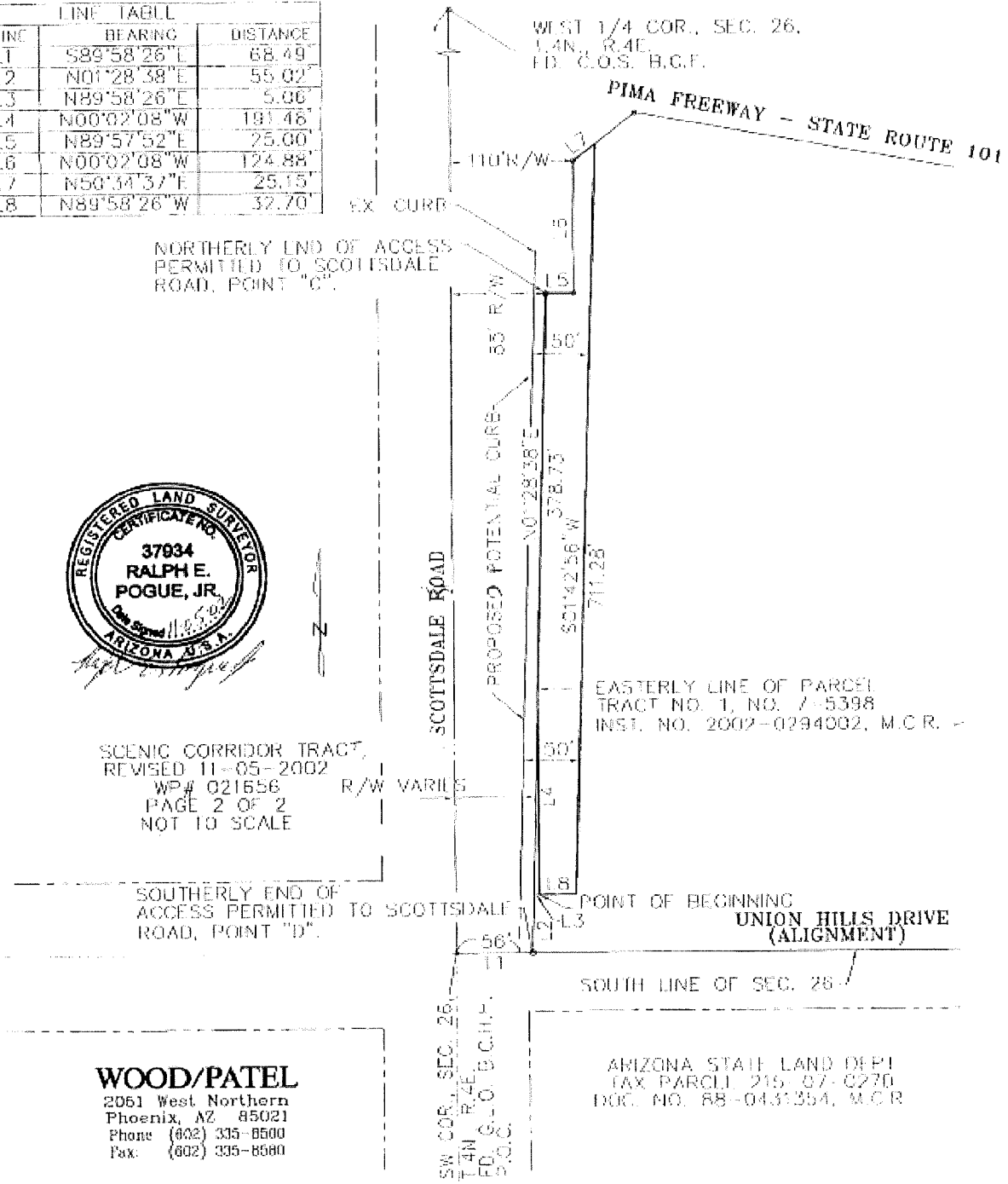
EXHIBIT 1 to Exhibit "D"  
Page 3 of 6

Contract No. 2022-175-COS

SCENIC CORRIDOR TRACT

November 5, 2002  
Wood/Patel #021656, Page 2 of 2

| LINE TABLE |             |          |
|------------|-------------|----------|
| LINE       | BEARING     | DISTANCE |
| L1         | S89°58'26"E | 68.49'   |
| L2         | N01°28'38"E | 55.02'   |
| L3         | N89°58'26"E | 5.00'    |
| L4         | N00°02'08"W | 191.48'  |
| L5         | N89°57'52"E | 25.00'   |
| L6         | N00°02'08"W | 124.88'  |
| L7         | N50°34'37"E | 25.15'   |
| L8         | N89°58'26"W | 32.70'   |



SCENIC CORRIDOR TRACT,  
REVISED 11-05-2002  
WP# 021656  
PAGE 2 OF 2  
NOT TO SCALE

**WOOD/PATEL**  
2061 West Northern  
Phoenix, AZ 85021  
Phone (602) 335-8500  
Fax (602) 335-8500

ARIZONA STATE LAND DEPT  
TAX PARCEL 215-07-0270  
DOC. NO. 88-0431354, M.C.R.

## LANDSCAPE TRACT

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the southwest corner of said Section 26;

THENCE along the south line of said section, South 89°58'24" East, a distance of 68.49 feet, to the easterly line of Parcel No. 7-5398, Tract No. 1, as recorded in Instrument No. 2002- 0294002, Maricopa County Records;

THENCE leaving said south line, along said easterly line, North 01°28'38" East, a distance of 55.02 feet;

THENCE leaving said easterly line, South 89°58'26" East, a distance of 37.76 feet, to the POINT OF BEGINNING;

THENCE North 01°42'56" East, a distance of 25.01 feet;

THENCE South 89°58'26" East, a distance of 531.94 feet, to the beginning of a curve;

THENCE easterly along said curve, having a radius of 1680.00 feet, concave southerly through a central angle of 08°43'49", a distance of 255.98 feet, to a point of intersection with a non-tangent line;

THENCE South 00°02' 11" East, a distance of 25.30 feet, to the beginning of a non-tangent curve;

THENCE westerly along said curve, having a radius of 1655.00 feet, concave southerly, whose radius bears South 08°53'25" West, through a central angle of 08°5 1 '5 1 " , a distance of 256.04 feet, to the curve's end;

THENCE North 89°58'26" West, a distance of 532.68 feet, to the POINT OF BEGINNING.

Containing 0.4524 acres, or 19,708 square feet of land, more or less.

Subject to existing rights-of-way and easements.



LANDSCAPE TRACT

November 5, 2002  
Wood/Patel #021656, Page 2 of 2

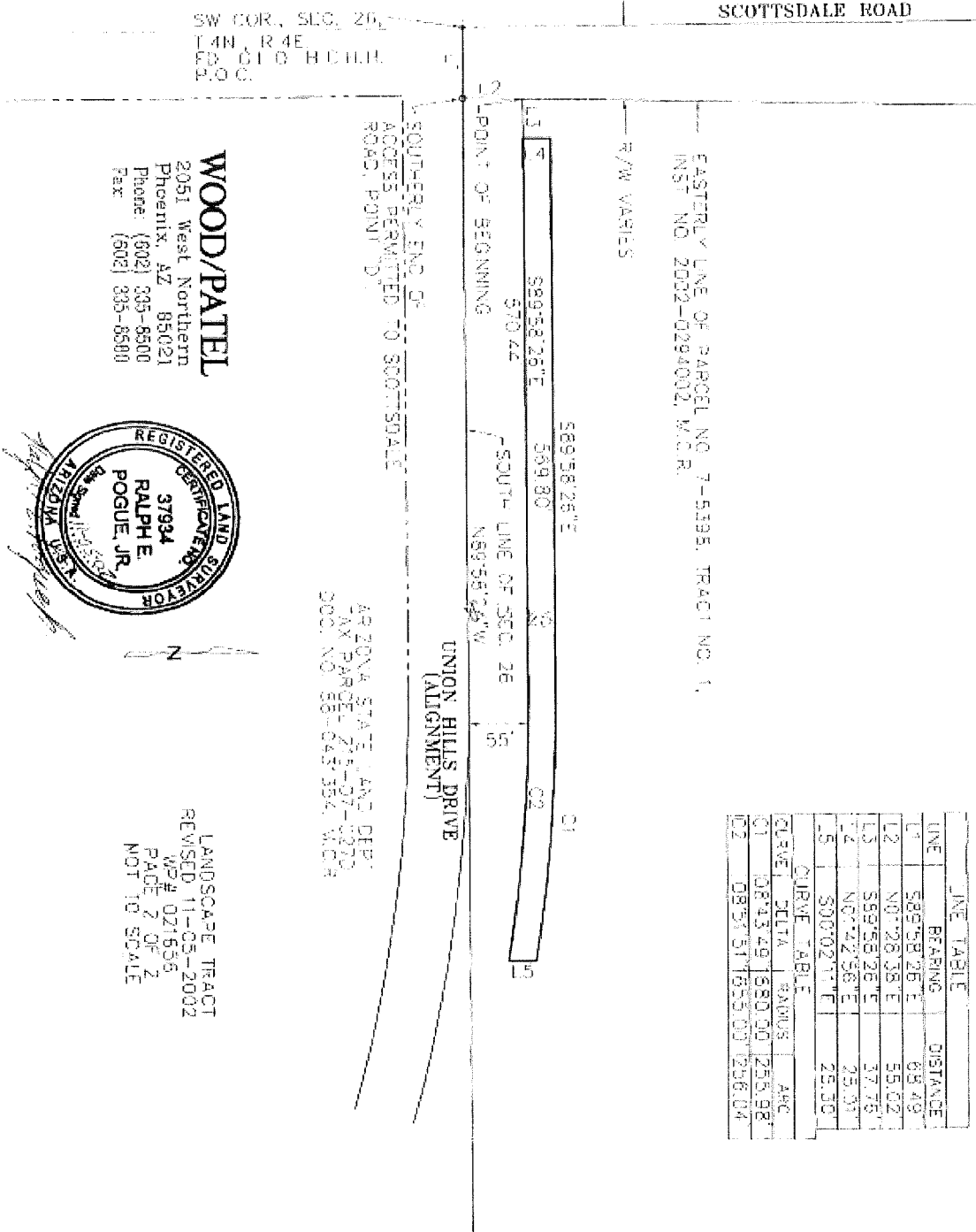


EXHIBIT 1 to Exhibit "D"  
Page 6 of 6



**APPENDIX "A"**  
**ATTACHED TO CITY QUIT CLAIM DEED**

**VEHICULAR NON-MOTORIZED ACCESS AND SCENIC CORRIDOR EASEMENT**

November 5, 2002  
 Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the southwest corner of said Section 26;

THENCE along the south line of said section, South 89°58'26" East, a distance of 68.49 feet, to the easterly line of Parcel 7-5398, Tract No. 1, as recorded in Instrument No. 2002- 0294002, Maricopa County Records;

THENCE leaving said south line, along said easterly line, North 01 °28'38" East, a distance of 55.02 feet;

THENCE leaving said easterly line, South 89°58'26" East, a distance of 5.06 feet, to the POINT OF BEGINNING;

THENCE North 00°02'08" West, a distance of 191.48 feet, to said easterly line;

THENCE along the said easterly line, North 01°28'38" East, a distance of 378.73 feet; THENCE North 89°57'52" East, a distance of 25.00 feet;

THENCE North 00°02'08" West, a distance of 124.88 feet;

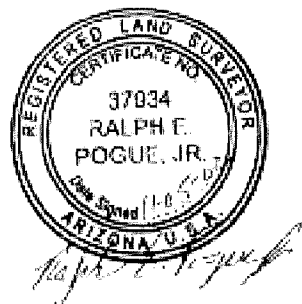
THENCE North 50°34'36" East, a distance of 25.15 feet;

THENCE leaving said easterly line, South 0 1°42'56" West, a distance of 711.28 feet;

THENCE North 89°58'26" West, a distance of 32.70 feet, to the POINT OF BEGINNING.

Containing 0.5510 acres, or 24,000 square feet of land, more or less.

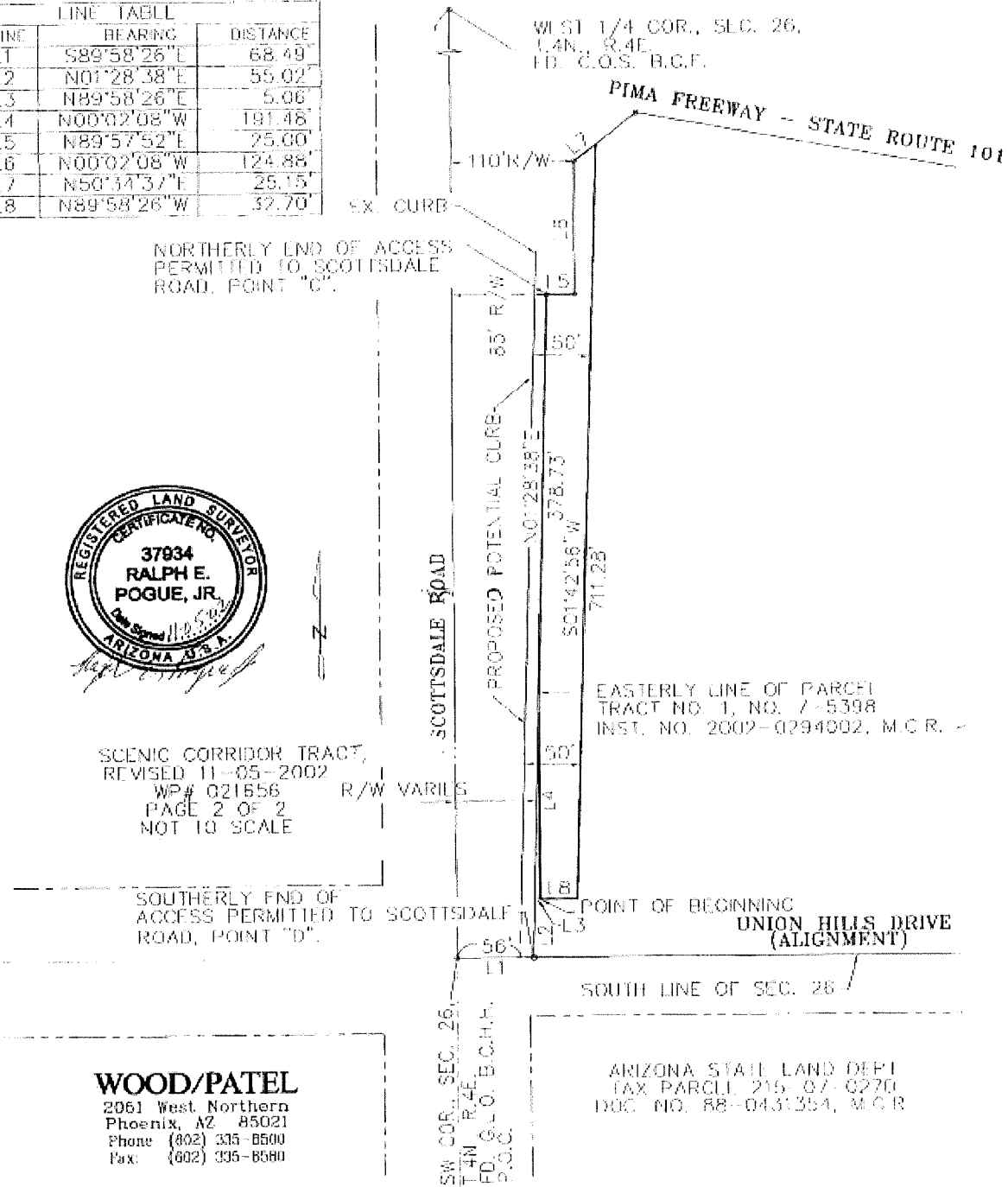
Subject to existing rights-of-way and easements.



**VEHICULAR NON-MOTORIZED ACCESS AND SCENIC CORRIDOR EASEMENT**

November 5, 2002  
Wood/Patel #021656, Page 2 of 2

| LINE TABLE |              |          |
|------------|--------------|----------|
| LINE       | BEARING      | DISTANCE |
| L1         | S89°58'26" E | 68.49    |
| L2         | N01°28'38" E | 55.02    |
| L3         | N89°58'26" E | 5.06     |
| L4         | N00°02'08" W | 191.48   |
| L5         | N89°57'52" E | 75.00    |
| L6         | N00°02'08" W | 124.88   |
| L7         | N50°34'37" E | 25.15    |
| L8         | N89°58'26" W | 32.70    |



**APPENDIX "B"**  
**ATTACHED TO CITY QUIT CLAIM DEED**  
**PUBLIC USE AND LANDSCAPING EASEMENT**

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

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THENCE leaving said south line, along said easterly line, North 01°28'38" East, a distance of 55.02 feet;

THENCE leaving said easterly line, South 89°58'26" East, a distance of 37.76 feet, to the POINT OF BEGINNING;

THENCE North 01°42'56" East, a distance of 25.01 feet;

THENCE South 89°58'26" East, a distance of 531.94 feet, to the beginning of a curve;

THENCE easterly along said curve, having a radius of 1680.00 feet, concave southerly through a central angle of 08°43'49", a distance of 255.98 feet, to a point of intersection with a non-tangent line;

THENCE South 00°02' 11" East, a distance of 25.30 feet, to the beginning of a non-tangent curve;

THENCE westerly along said curve, having a radius of 1655.00 feet, concave southerly, whose radius bears South 08°53'25" West, through a central angle of 08°5 1 '5 1", a distance of 256.04 feet, to the curve's end;

THENCE North 89°58'26" West, a distance of 532.68 feet, to the POINT OF BEGINNING.

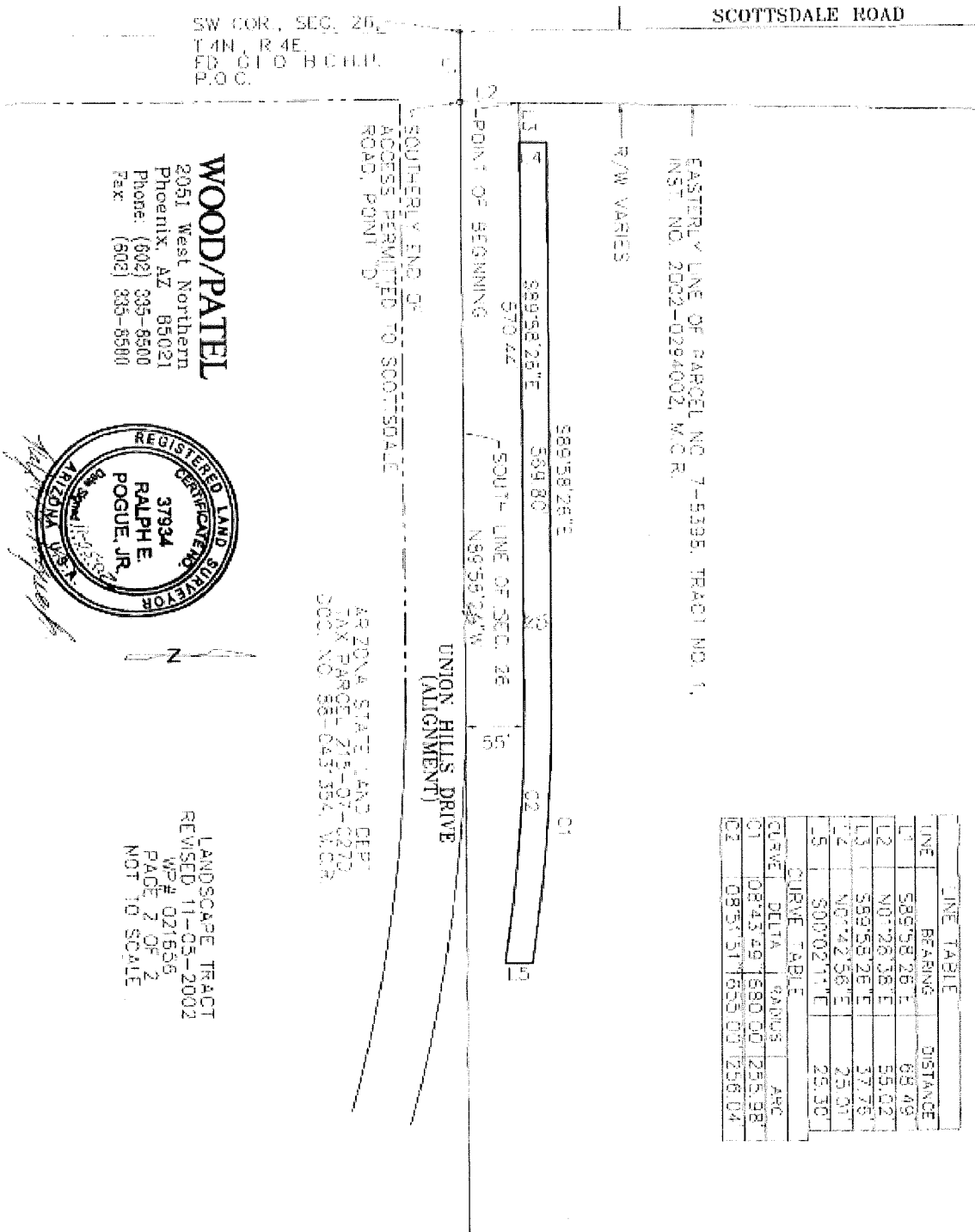
Containing 0.4524 acres, or 19,708 square feet of land, more or less.

Subject to existing rights-of-way and easements.



**PUBLIC USE AND LANDSCAPING EASEMENT**

November 5, 2002  
Wood/Patel #021656, Page 2 of 2



**APPENDIX "C"**  
**ATTACHED TO CITY QUIT CLAIM DEED**

**DRAINAGE AND FLOOD CONTROL EASEMENT**

November 5, 2002  
Wood/Patel #021656, Page 1 of 2

A parcel of land lying within Section 26, Township 4 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at south quarter corner of said Section 26;

THENCE along the south line of said section, North 89°58'26" West, a distance of 1320.38 feet, to the east line of the west half of the west half of said section, and the POINT OF BEGINNING;

THENCE leaving said East line, continuing along said south line, North 89°58'26" West, a distance of 256.95 feet, to the beginning of a non-tangent curve;

THENCE leaving said south line, westerly along said curve, having a radius of 1655.00 feet, concave southerly, whose radius bears South 14°50' 19" West, through a central angle of 05°56'54", a distance of 171.82 feet, to a point of intersection with a non-tangent line;

THENCE North 00°02' 11" West, a distance of 39.77 feet;

THENCE South 89°58'26" East, a distance of 350.00 feet;

THENCE North 00°02' 11" West, a distance of 472.51 feet;

THENCE North 79°08'03" West, a distance of 57.82 feet;

THENCE North 10°51 '57" East, a distance of 10.00 feet;

THENCE North 79°08'03" West, a distance of 473.18 feet;

THENCE North 10°51 '56" East, a distance of 30.00 feet, to the Easterly line of Parcel No. 7- 5398, Tract No. 1, as recorded in Instrument No. 2002-0294002, Maricopa County Records;

THENCE along said Easterly line, South 79°08'03" East, a distance of 599.67 feet, to a point on said line of the west half of the west half;

THENCE leaving said easterly line, along said east line, South 00°02' 11" East, a distance of 573.88 feet, to the POINT OF BEGINNING.

Containing 1.9047 acres, or 82,968 square feet of land, more or less.

Subject to existing rights-of-way and easements.

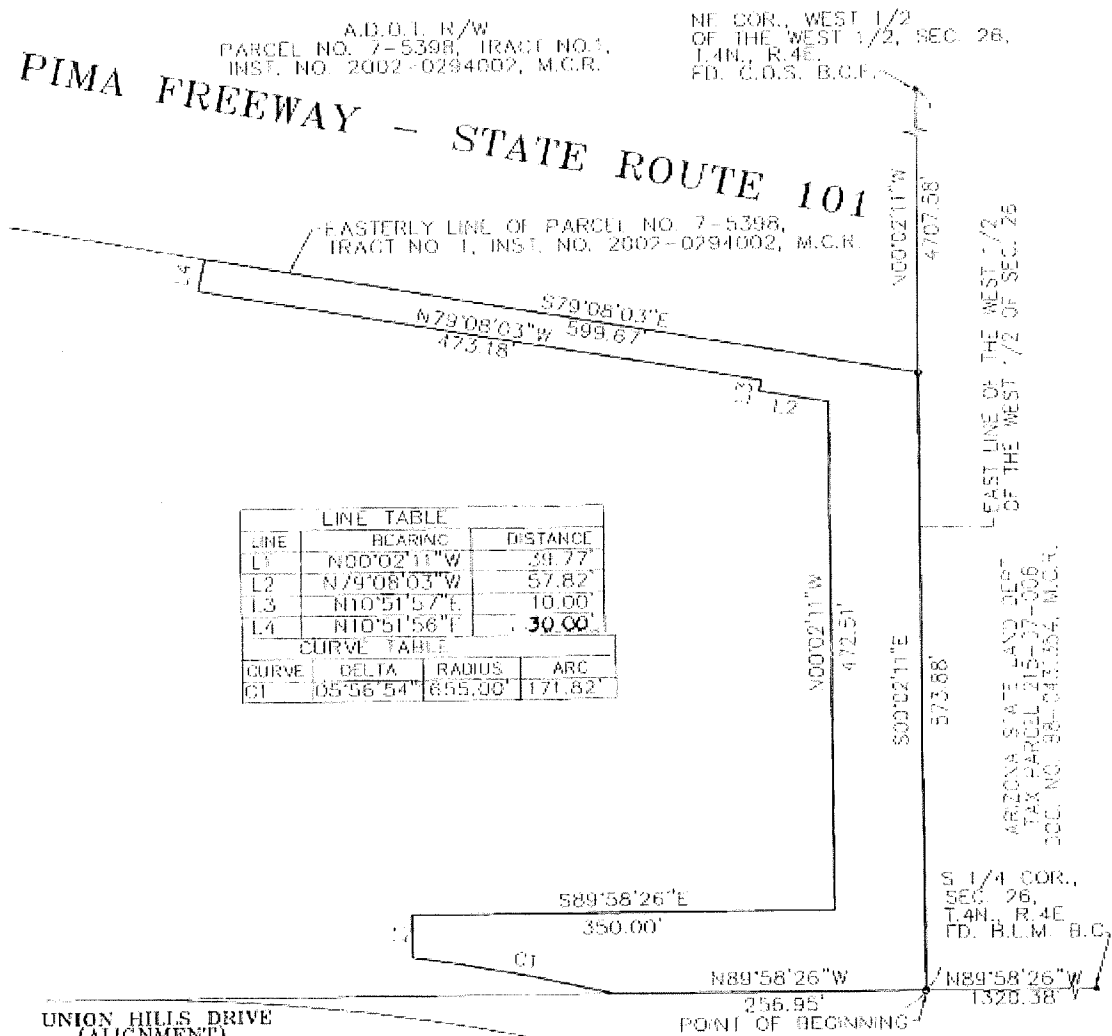
APPENDIX C to Exhibit "D"  
Page 1 of 2



Contract No. 2022-175-COS

**APPENDIX "C"**  
**DRAINAGE AND FLOOD CONTROL EASEMENT**

November 5, 2002  
Wood/Patel #021656, Page 2 of 2



| LINE TABLE |             |          |
|------------|-------------|----------|
| LINE       | BEARING     | DISTANCE |
| L1         | N00°02'11"W | 39.77    |
| L2         | N79°08'03"W | 57.82    |
| L3         | N10°51'57"E | 10.00    |
| L4         | N10°51'56"E | 30.00    |

| CURVE TABLE |           |         |         |
|-------------|-----------|---------|---------|
| CURVE       | DELTA     | RADIUS  | ARC     |
| C1          | 05°58'54" | 655.00' | 171.82' |

ARIZONA STATE LAND DEPT.  
TAX PARCEL 215-07-0270  
SOC. NO. 88-0431354, M.C.R.

**WOOD/PATEL**  
2051 West Northern  
Phoenix, AZ 85021  
Phone: (602) 335-8580  
Fax: (602) 335-8580



FLOOD CONTROL TRACT  
REVISED 11-05-2002  
WP# 021656  
PAGE 2 OF 2  
NOT TO SCALE

**EXHIBIT "E"****CITY DEDICATIONS**

1. **RIGHT-OF-WAY DEDICATIONS.** Prior to issuance of any permit for the Project, Developer shall make the following fee-simple right-of-way dedications to the City, along Project development frontages:
  - a. **E MAYO BOULEVARD.** Ten (10) foot dedication, for a total sixty-five (65) foot wide north half street right of way width.
  - b. **N SCOTTSDALE ROAD AND E MAYO BOULEVARD INTERSECTION.** Twenty-five (25) foot radius corner dedication.
  - c. **E MAYO BOULEVARD ROUND-ABOUT.** Right-of-way dedication, within Property, to accommodate a City standard's compliant round-about at the second Project entrance, approximately eight hundred feet east of N Scottsdale Road, along E Mayo Boulevard; shifting round-about north so as to not encroach onto non-Project development lands
2. **SCENIC CORRIDOR EASEMENT.** Prior to issuance of any permit for the Project, Developer shall dedicate a minimum 50-foot-wide continuous Scenic Corridor Easement to the City along the Project's N. Scottsdale Road Street frontage. The width of the Scenic Corridor Easement shall be measured from back of curb. Unless otherwise approved by the Development Review Board, the area within the Scenic Corridor Easement shall be left in a natural condition.
3. **LANDSCAPE BUFFER.** Developer shall provide a minimum 30-foot-wide with an average 50-foot-wide landscape buffer along E. Mayo Boulevard.
4. **PUBLIC TRANSIT FACILITY AND ACCESS EASEMENT.** Prior to issuance of any permit for the Project, Developer shall dedicate a continuous Public Transit Facility and Access Easement to the City to contain the transit facility improvements that are to be constructed in accordance with the infrastructure requirements as set forth in the Stipulations for the Zoning Application contained in Ordinance No. 4571 where the transit facility crosses onto private property of the Project.
5. **PUBLIC NON-MOTORIZED ACCESS EASEMENT.** Prior to issuance of any permit for the Project, Developer shall dedicate a continuous Public Non-Motorized Access Easement to the City to contain the public sidewalk in locations where the sidewalk crosses onto private property of the Project.

6. **WATER AND SEWER FACILITIES EASEMENT.** Prior to issuance of any permit for the Project, Developer shall dedicate a twenty (20) foot, minimum, continuous Water and Sewer Facilities Easement to the City to contain public water and sewer infrastructure not contained within recorded right-of-way.
  
7. **AVIGATION EASEMENT.** Prior to the issuance of any permit for the Project, Developer shall dedicate an Avigation Easement to the City, in a form acceptable to the City Attorney, or designee.
  
8. **DRAINAGE EASEMENT.** A Drainage and Flood Control Easement in the form set forth in the Scottsdale Design Standards & Policies Manual that encompasses the land described and depicted on Appendix C to the Quit Claim Deed.



**EXHIBIT "F"****PRIOR DEVELOPMENT AGREEMENT TERMINATION****WHEN RECORDED RETURN TO:**

CITY OF SCOTTSDALE  
 ONE STOP SHOP RECORDS  
 7447 East Indian School Road, Suite 100  
 Scottsdale, AZ 85251

C.O.S. Contract No. 2022-175-COS  
 (Optima McDowell Mountain Village)  
 (Resolution No. 12631)

THIS PRIOR DEVELOPMENT AGREEMENT TERMINATION (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and McDowell Mountain Village Declarant LLC, a Delaware limited liability company, and its successors and assigns (collectively "Developer").

**RECITALS**

A. Developer owns certain real property located at 18777 N. Scottsdale Road, which contains approximately 21.884 gross acres (the "Property").

B. The Property previously was made subject to two development agreements, Development Agreement 2002-142-COS dated November 19, 2002, and recorded at Instrument No. 2002-1240138, and Development Agreement 2002-143-COS dated November 19, 2002, and recorded at Instrument No. 2002-1240139 of the Official Records of the Maricopa County Recorder's Office (collectively, the "Prior Development Agreements").

C. Pursuant to the terms of a Development Agreement C.O.S. Contract No. 2022-175-COS (Optima McDowell Mountain Village), dated \_\_\_\_\_, 2022, and recorded at Instrument No. XXXX-XXXXXXX, City and Developer agreed to terminate, to the extent not already accomplished, the Prior Development Agreements with respect to the Property.

In consideration of the above premises, and the mutual promises and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Developer and City agree as follows:

**AGREEMENT**

1. Recitals. The recitals set forth above are incorporated into this Agreement by reference.

2. Termination of Prior Development Agreements. To the extent not already accomplished under the terms of the Prior Development Agreements or the Partial Termination and Release of Development Agreement dated May 12, 2003, and recorded that same date at Instrument No. 2003-0602832 in the Official Records of the Maricopa County Recorder's Office, upon the recording of this Agreement, the City and Developer hereby agree that the Prior Development Agreements shall be deemed to be terminated and of no further force or effect with respect to the Property.

3. Miscellaneous. The following additional provisions apply to this Agreement:

3.1 Amendments. This Agreement may not be amended except by a formal writing executed by all the parties.

3.2 Severability. If any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.

3.3 Conflicts of interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by law. This Agreement is subject to the cancellation provisions of A.R.S. Section 38-511.

3.4 Authority. Each party to this Agreement represents to the other that it has full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

3.5 Non-liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount that may become due to any party or successor, or with respect to any obligation of City related to this Agreement.

3.6 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

3.7 Interpretation. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Developer or City.

3.8 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

3.9 Attorneys' Fees. If legal action is brought by any party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.

3.10 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

3.11 Venue & Jurisdiction. Except where Arbitration is required under this Agreement, legal actions regarding this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and other requirements of City's claims procedures from time to time.

3.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

ATTEST:

**CITY OF SCOTTSDALE**  
an Arizona municipal corporation

By: \_\_\_\_\_  
Ben Lane, City Clerk

By: \_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
Sherry R. Scott, City Attorney  
Eric C. Anderson, Sr. Assistant City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by David D. Ortega, Mayor of the City of Scottsdale, an Arizona municipal corporation.

My Commission Expires: \_\_\_\_\_  
Notary Public

DEVELOPER:  
**MCDOWELL MOUNTAIN VILLAGE DECLARANT LLC**  
a Delaware limited liability company

\_\_\_\_\_  
David C. Hovey, Jr.  
President

STATE OF ARIZONA        )  
  )  
County of Maricopa        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, by David C. Hovey, Jr., President of McDowell Mountain Village Declarant LLC, a Delaware limited liability company, on behalf of the Company.

My Commission Expires: \_\_\_\_\_  
Notary Public